FEDERAL REGISTER

Vol. 78 Thursday,

No. 7 January 10, 2013

Pages 2193–2318

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 78, No. 7

Thursday, January 10, 2013

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 78, No. 7
Thursday, January 10, 2013

Presidential Documents

Title 3—

The President

Proclamation 8894 of October 29, 2012—To Implement the United States-Panama Trade Promotion Agreement and for Other Purposes

Correction

In Presidential document 2012–27143 beginning on page 66507 in the issue of Monday, November 5, 2012, make the following correction:

On page 66507, the proclamation identification heading on line one should read ''Proclamation 8894 of October 29, 2012''.

[FR Doc. C1–2012–27143
Filed 1–9–13; 8:45 am]
Billing code 3295–F3

Rules and Regulations

Federal Register
Vol. 78, No. 7
Thursday, January 10, 2013

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1202; Directorate Identifier 2012–NE–38–AD; Amendment 39–17309; AD 2012–26–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. This AD requires a one-time removal from service of the high-pressure (HP) compressor stages 1 to 6 rotor disc assembly before exceeding certain thresholds. This AD was prompted by a report of silver chloride-induced stress corrosion cracking of the HP compressor stages 1 to 6 rotor disc assembly, identified during overhaul. We are issuing this AD to prevent failure of the HP compressor stages 1 to 6 rotor disc assembly, which could result in uncontained failure of the engine and damage to the airplane.

DATES: This AD becomes effective January 10, 2013.

We must receive comments on this AD by February 25, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; telephone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0230, dated October 30, 2012 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Silver chloride-induced stress corrosion cracking was identified during overhaul of a BR700–715 engine, on the High Pressure Compressor (HPC) stages 1 to 6 rotor disc assembly. Subsequent evaluation concluded that the affected part life limitation values declared in the engine Time Limits Manual cannot be supported for high cyclic life HPC discs.
>
> This condition, if not corrected, could lead to uncontained HPC disc failure, possibly resulting in damage to, and/or reduced control of the aeroplane.

You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, they have notified us of the unsafe condition described in the MCAI referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires a one-time removal from service of the HP compressor stages 1 to 6 rotor disc assembly before exceeding certain thresholds.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance times for HP compressor stages 1 to 6 rotor disc assemblies that are at or over the removal thresholds. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1202; Directorate Identifier 2012–NE–38–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments

received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–26–14 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Amendment 39–17309; Docket No. FAA–2012–1202; Directorate Identifier 2012–NE–38–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 10, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd & Co KG BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines.

(d) Reason

This AD was prompted by a report of silver chloride-induced stress corrosion cracking of the high-pressure (HP) compressor stages 1 to 6 rotor disc assembly, identified during overhaul. We are issuing this AD to prevent failure of the HP compressor stages 1 to 6 rotor disc assembly, which could result in uncontained failure of the engine and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) BR700–715A1–30 Turbofan Engines Operated Under the Hawaiian Flight Mission Only

For BR700–715A1–30 turbofan engines operated under the Hawaiian Flight Mission only, do the following:

(1) If the HP compressor stages 1 to 6 rotor disc assembly has accumulated 15,700 flight cycles since new or fewer on the effective date of this AD, remove the rotor disc assembly from service before exceeding 16,000 flight cycles since new (CSN).

(2) If the HP compressor stages 1 to 6 rotor disc assembly has accumulated more than 15,700 flight CSN on the effective date of this AD, remove the rotor disc assembly from service within 300 flight cycles.

(2) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines (All Flight Missions Except the Hawaiian Flight Mission)

For BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines (all flight missions except the Hawaiian Flight Mission), do the following:

(1) If the HP compressor stages 1 to 6 rotor disc assembly has accumulated 13,700 flight CSN or fewer on the effective date of this AD, remove the rotor disc assembly from service before exceeding 14,000 flight CSN.

(2) If the HP compressor stages 1 to 6 rotor disc assembly has accumulated more than 13,700 flight cycles since new on the effective date of this AD, remove the rotor disc assembly from service within 300 flight cycles.

(f) Terminating Action

Performing the one-time removal from service of the stages 1 to 6 rotor disc assembly, as specified in this AD, is terminating action to this AD.

(g) Definition

For the purpose of this AD, flight cycles is the total flight CSN on the HP compressor stages 1 to 6 rotor disc assembly, without any pro-rated calculations applied for different flight missions. Guidance on calculating total flight cycles can be found in Rolls-Royce Deutschland Ltd & Co KG Notice to Operators BR715 engines NTO: No. 184, dated October 25, 2012.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

(2) Refer to European Aviation Safety Agency AD 2012–0230, dated October 30, 2012, and Rolls-Royce Deutschland Ltd & Co KG Alert Service Bulletin No. SB–BR700–72–A900401, dated October 25, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; telephone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 27, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–31588 Filed 1–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1350; Directorate Identifier 2012–NE–40–AD; Amendment 39–17313; AD 2012–27–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Tay 620–15 turbofan engines. This AD requires a one-time inspection of the low-pressure compressor (LPC) fan blades and if erosion is found their replacement before further flight. This AD was prompted by evidence of excessive leading edge erosion of the LPC fan blades on certain Tay 620–15 engines. We are issuing this AD to prevent failure of the LPC fan blade, which could result in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective January 25, 2013.

We must receive comments on this AD by February 25, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2012–0234, dated November 6, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The Low Pressure Compressor (LPC) (fan) blades of certain Tay 620/15/20 and Tay 620–15 engines show evidence of excessive leading edge erosion. Excessive material removal during the maintenance reduces the LPC (fan) blade chordal width and potentially changes the balance of the fan blade. Reduced chordal width can affect LPC (fan) blade performance and in combination with other circumstances could lead to a fan blade root failure and fan blade separation.
>
> This condition, if not detected and corrected, could lead to the LPC (fan) blade failure, potentially causing release of high-energy debris, possibly resulting in damage to the aeroplane and/or injury to the occupants.

We are issuing this AD to prevent failure of the LPC fan blade, which could result in uncontained engine failure and damage to the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

RRD has issued Alert Non-Modification Service Bulletin TAY–72–A1777, dated October 26, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires a one-time inspection of the LPC fan blades and if erosion is found their replacement before further flight.

FAA's Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1350; Directorate Identifier 2012–NE–40–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–27–01 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce plc, Derby, England): Amendment 39–17313; Docket No. FAA–2012–1350; Directorate Identifier 2012–NE–40–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 25, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 620–15 turbofan engines, serial numbers 17085, 17088, 17166, 17072, 17073, 17078, and 17079.

(d) Reason

This AD was prompted by evidence of excessive leading edge erosion of the low-pressure compressor (LPC) fan blades on certain Tay 620–15 engines. We are issuing this AD to prevent failure of the LPC fan blade, which could result in uncontained engine failure and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following.

(1) Before the next flight after the effective date of the AD, inspect the leading edge of the LPC fan blades and determine if excessive erosion is evident. Guidance on conducting the inspection can be found in RRD Alert Non-Modification Service Bulletin (NMSB) TAY–72–A1777, dated October 26, 2012.

(2) If the measured blade chordal width is outside the requirements, before the next flight, replace the complete set of LPC fan blades with a set of LPC fan blades eligible for installation.

(3) Within 30 days after performing the inspection required by paragraph (e)(1) of this AD, provide, for all repaired blades, the actual chordal width measurement to RRD, Service Engineering.

(f) Paperwork Reduction Act Burden Statement

For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

(2) Refer to European Aviation Safety Agency Emergency AD 2012–0234, dated November 6, 2012, and RRD Alert NMSB TAY–72–A1777.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on December 27, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–00128 Filed 1–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0901; Directorate Identifier 2012–NE–19–AD; Amendment 39–17314; AD 2012–27–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. This AD requires performing a high gas generator speed (NG) rating vibration check. This AD was prompted by several reports of uncommanded in-flight shutdown on

Arriel 1 engines. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in an emergency landing.

DATES: This AD becomes effective February 14, 2013.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 13, 2012 (77 FR 56585). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of uncommanded in-flight shut-down (IFSD) have been reported on ARRIEL 1 engines. Results of subsequent investigations showed that some Gas Generator (GG) rear bearing failures have occurred following ''Level 3'' maintenance actions on the GG rotating assembly. Some of these maintenance actions may have created an unbalanced condition of the GG rotating assembly and, ultimately, failure of the GG rear bearing.
>
> This condition, if not detected and corrected, could lead to an uncommanded engine in-flight shut down and may ultimately lead to an emergency landing.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 56585, September 13, 2012).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed (77 FR 56585, September 13, 2012).

Costs of Compliance

Based on the service information, we estimate that this AD affects about 1,445 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per product to comply with this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $122,825.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–27–02 Turbomeca S.A.: Amendment 39–17314; Docket No. FAA–2012–0901; Directorate Identifier 2012–NE–19–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 14, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Turbomeca S.A. ARRIEL 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines.

(d) Reason

This AD was prompted by several reports of uncommanded in-flight shutdown on Arriel 1 engines. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in an emergency landing.

(e) Actions and Compliance

Unless already done, from the effective date of this AD, do the following. After any Level 3 maintenance action on the gas generator (GG) rotating assembly and before returning the engine to service, accomplish a high GG speed (NG) rating vibration check.

(f) Definition

Level 3 maintenance on the GG rotating assembly is when the Module 03 is removed from the helicopter for implementation of deep maintenance operation to be performed in accordance with the applicable maintenance instructions.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803;

email: *frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

(2) Refer to Mandatory Continuing Airworthiness Information AD 2012–0117, dated July 3, 2012, for related information.

Issued in Burlington, Massachusetts, on December 31, 2012.

Kevin Dickert,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–00130 Filed 1–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0750; Airspace Docket No. 11–AWP–4]

RIN 2120–AA66

Establishment of VOR Federal Airway V–629; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes VHF omnidirectional range (VOR) Federal airway V–629, near Las Vegas, NV, to supplement the existing routes structure for aircraft navigating in an area of marginal radar coverage. This action enhances the safety and efficiency of the National Airspace System.

DATES: Effective date 0901 UTC, March 7, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 6, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish V–629 near Las Vegas, NV. (77 FR 54859). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by establishing VOR Federal airway V–629, near Las Vegas, NV, to supplement the existing route structure and provide positive course guidance for aircraft navigating in an area of marginal radar coverage.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a VOR Federal airway to enhance the safety and efficiency of the National Airspace System in the vicinity of Las Vegas, NV. Except for editorial changes, this rulemaking is the same as published in the NPRM.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways.

* * * * *

V–629 [New]

From INT Goffs, CA, 033° and the Boulder City, NV, 182° radials to Boulder City.

Issued in Washington, DC, on December 12, 2012.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–00289 Filed 1–8–13; 4:15 pm]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy Labeling Rule

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: As part of its ongoing regulatory review of the Appliance Labeling Rule (''Rule''), the Commission amends the Rule by streamlining data reporting requirements for manufacturers, clarifying testing requirements and enforcement provisions, improving online energy label disclosures, and making several minor technical changes and

corrections. The Commission continues to consider other issues related to this regulatory review and may seek comment on additional proposals in the future.

DATES: The amendments published in this document will become effective on February 15, 2013, with the exception of the amendments to §§ 305.4(b)(6) and 305.6, which become effective on July 15, 2013, and the amendments to § 305.20 and Appendix L, which become effective on January 15, 2014. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of May 10, 2011.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule pursuant to the Energy Policy and Conservation Act (EPCA).[1] The Rule requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.[2] When first published in 1979,[3] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.[4]

The Rule requires manufacturers to attach yellow EnergyGuide labels on many of these products.[5] It prohibits retailers from removing these labels or rendering them illegible.[6] In addition, the Rule directs sellers, including retailers, to post energy disclosures on Web sites and in paper catalogs from which consumers can order products.[7]

EnergyGuide labels for covered appliances and televisions contain three key disclosures: estimated annual operating cost (for most products), a ''range of comparability'' showing the highest and lowest energy consumption or efficiency ratings for all similar models, and the product's energy consumption or energy efficiency rating as derived from standard Department of Energy (DOE) tests. The Rule specifies the content and format of the label. Manufacturers cannot place any information on the label other than what the Rule specifically allows.

The Rule also contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing new models and on an annual basis thereafter.[8] These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings. DOE also has similar reporting requirements for its efficiency standards certification program.[9]

II. Regulatory Review

In a March 15, 2012 Notice of Proposed Rulemaking (NPRM),[10] the Commission initiated a regulatory review of the Rule, inviting comment on several specific proposals as well as the Rule's overall regulatory and economic impacts. In particular, the Commission proposed to: (1) Eliminate duplicative requirements by harmonizing FTC and DOE reporting and testing rules; (2) prohibit hang tag labels for all covered clothes washers, dishwashers, and refrigerators, and instead require adhesive labels; (3) require manufacturers to place room air conditioner labels on display boxes instead of on the product; (4) improve retailer Web site and paper catalog disclosures by retailers; (5) require manufacturers to include estimated operating cost information on ceiling fan labels; (6) require manufacturers to include specific capacity information on clothes washer EnergyGuide labels; (7) require a QR (''Quick Response'') code on EnergyGuide labels to link mobile phone users to FTC and DOE information; (8) update product definitions for refrigerators and freezers; (9) clarify the Rule's enforcement provisions; and (10) shorten the Rule's title.[11]

The Commission has reviewed the responsive comments[12] and now issues final amendments to address two of the principal issues raised in the NPRM—the harmonization of reporting and testing requirements, and improvements to the Rule's online disclosure requirements—as well as several less significant changes. In the future, the Commission plans to address some of the other issues discussed in the NPRM, as well as additional issues raised by commenters, because these issues require further comment and consideration.

III. Final Amendments

The Commission announces final amendments to improve the Rule

---

[1] 42 U.S.C. 6291 *et seq.*

[2] For more information about the Rule, *see http://www.ftc.gov/appliances.*

[3] 44 FR 66466 (Nov. 19, 1979).

[4] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

[5] *See* 42 U.S.C. 6302(a)(1); 16 CFR 305.4(a)(1). The EnergyGuide label must appear on refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, pool heaters, central air conditioners, heat pumps, furnaces, and televisions. *See* 16 CFR 305.11, 305.12, 305.14, and 305.17. The EnergyGuide label constitutes a visually uniform ''brand'' for all these products, but it has different dimensions and disclosures based on the nature and energy use of the product. *See* 16 CFR Part 305 Appx. L (label prototypes). Ceiling fans must bear labels similar to EnergyGuide labels, but visually distinct. 16 CFR 305.13. The remainder of the Rule's covered products bear other types of labels or disclosures related to energy or water use (for plumbing products), rather than the EnergyGuide brand. For example, common consumer light bulbs must bear a ''Lighting Facts'' label.

[6] *See* 16 CFR 305.4(a)(2); 42 U.S.C. 6302(a)(2).

[7] *See* 16 CFR 305.20; 42 U.S.C. 6296(a).

[8] *See* 16 CFR 305.8; 42 U.S.C. 6296(b). In addition to current models, each annual report must identify models discontinued since the previous report. 16 CFR 305.8(b)(2). In addition to annual reports, manufacturers must submit a report for each new model prior to distribution of that model. 16 CFR 305.8(c).

[9] 10 CFR Part 429.

[10] 77 FR 15298 (Mar. 15, 2012). In 2011, the Commission also proposed amendments related to the Rule's light bulb coverage. *See* 76 FR 45715 (Aug. 1, 2011).

[11] The Commission also proposed two technical corrections related to ENERGY STAR logos on heating and cooling equipment and television labels for small models. 77 FR 15298, 15303.

[12] The Commission received 15 timely comments in response to the NPRM. The commenters included A.O. Smith Corporation (#00003), Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (#00020), Alliance Laundry Systems LLC (#00011), Association of Home Appliance Manufacturers (AHAM) (#00013), Bradford White Corporation (#00004), BSH Home Appliances (#00007), Consumer Electronics Association (CEA) (#00012), consolidated comments from the American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, Consumers Union, Earthjustice, Natural Resources Defense Council, and Public Citizen (referred to in this Notice as ''consolidated comments from consumer and efficiency organizations'') (#00015), Highfill, Lisa (#00006), National Electrical Manufacturers Association (NEMA) (#00005), Pacific Gas and Electric Company (PG&E) (#00009), Panasonic Corporation of North America (#00014), Sonthipanya, Shannon (#00002), Southern California Edison (#00008), and Whirlpool Corporation (#00010). The comments can be found at: *http://www.ftc.gov/os/comments/energylabelamend/index.shtm.*

through harmonization of DOE and FTC reporting and testing rules, enhance retailer Web site and paper catalog disclosures, update product definitions for refrigerators and freezers, clarify the Rule's enforcement and penalty provisions, change the Rule's title, and correct a few technical errors. Below, we discuss the comments received and the Commission's final decision on these issues.

A. Reporting and Testing Requirements

Background: In the NPRM, the Commission proposed to streamline current reporting requirements by allowing manufacturers to submit FTC-required data through a DOE database and by harmonizing FTC reporting rules with DOE requirements. The Commission also proposed to clarify FTC testing requirements for mandatory label disclosures.[13]

Specifically, the Commission proposed to allow manufacturers to meet FTC reporting requirements by using DOE's new web-based tool for energy reporting (the ''Compliance and Certification Management System'' (CCMS)).[14] Under current rules, manufacturers of each covered product must submit one report to DOE[15] and another, largely duplicative submission to the FTC. Under the proposal, manufacturers would send their reports only to DOE. Once manufacturers upload their data to DOE's database, the FTC would obtain the information from DOE and place it on the Commission's public record.[16]

The Commission also proposed to harmonize FTC reporting requirements with DOE certification rules. To achieve this goal, the FTC Rule would require the same report content as DOE. However, for ceiling fans, the FTC would continue to maintain separate reporting requirements because DOE's test procedures for these products are not mandatory.

In addition, the Commission proposed to clarify the DOE testing requirements that manufacturers must use to determine energy information for FTC labels. The current FTC Rule calls for adherence to applicable DOE test procedures generally, but does not mention several specific DOE testing requirements such as sampling rules, testing accreditation (for light bulbs), and testing waiver procedures. The proposed amendments specify that manufacturers must test their products in accordance with all of these DOE testing requirements.[17]

Comments: Commenters supported the proposal to harmonize FTC reporting and testing regulations with DOE.[18] For example, the Association of Home Appliance Manufacturers (AHAM) explained that the change ''would go a long way to minimize the burdens associated with this dual reporting.'' Similarly, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) observed that existing duplicative reporting requirements do not ''provide any benefit to consumers while considerably increasing the regulatory burden on manufacturers.'' No comments opposed the proposals. Commenters also urged the Commission to consider three specific issues related to reporting and testing.

First, some industry members raised concerns about the disparate scope of FTC and DOE reporting requirements.[19] They noted that the FTC's proposal, consistent with its current rule, requires annual reporting for models that are ''currently in production.'' In contrast, DOE reporting covers all models currently ''offered for sale,'' a broader category.[20] These comments preferred the FTC's approach and urged the Commission to maintain its coverage. They explained that DOE's approach requires manufacturers to keep track of information outside their control because manufacturers generally maintain records based on the models in current production, not on whether retailers offer them for sale, and manufacturers do not always know how long retailers will offer discontinued models for sale.

Second, industry commenters urged the FTC to recognize recent DOE rules allowing manufacturers to report energy ratings that are more conservative than tested ratings. Some manufacturers follow this practice to ensure that, given slight variations from unit to unit, their representations do not overstate the efficiency of their products. DOE has explained that ''the tested performance of the model(s) must be at least as good as the certified rating, after applying the appropriate sampling plan.'' [21] Consistent with this policy, DOE sampling regulations state that reported energy consumption values ''shall be greater than or equal to the higher of'' the value generated by the sampling procedures.[22]

Third, some industry commenters (*e.g.,* AHAM and Bradford White) noted that several manufacturers currently submit certification reports to DOE and FTC through voluntary industry certification programs, such as one currently administered by AHRI for heating and cooling equipment. These comments urged the Commission to continue allowing this type of reporting, to minimize the burden on manufacturers.

Discussion: After considering the comments, the Commission amends the Rule as proposed to harmonize its reporting and testing requirements with DOE.[23] These changes streamline reporting for manufacturers and ensure that all required product data is submitted to a single location.[24] In addition, the amendments will ensure that manufacturers develop the content of energy disclosures for the FTC labels based on DOE-required testing provisions.

Consistent with the proposal and existing rule, the final rule continues to require reporting for all models in current production and all models discontinued during the previous reporting year.[25] DOE currently requires reporting for all models available for sale (not just those in current production). The Commission's amendments should not materially change the scope or burden of reporting to DOE's database because FTC's coverage is not as broad as DOE's.

In addition, the Commission concurs with recent DOE guidance allowing manufacturers to rate models more conservatively than their tested

[13] The Rule's reporting requirements do not apply to televisions and LED (light-emitting diode) light bulbs. 76 FR 1038, 1040 n.28 (Jan. 6, 2011).

[14] 75 FR 27183 (May 14, 2010).

[15] *See* 10 CFR part 430; 42 U.S.C. 6296.

[16] *See* 16 CFR 4.9(b)(10)(xii).

[17] Unless otherwise specified in the Rule, the Commission did not propose to require compliance with any DOE testing provisions that DOE does not require for certification. This will ensure that the FTC does not inadvertently impose additional testing requirements. The Commission also proposed to eliminate various references to recommended Illuminating Engineering Society (IES) test procedures for incandescent and compact fluorescent lamps now superseded by specific DOE testing requirements.

[18] *See, e.g.,* Alliance, AHAM, National Electrical Manufacturers Association (NEMA), Energy and Consumer Organization Commenters.

[19] AHAM, Alliance Laundry Systems, Whirlpool, and BSH Home Appliances.

[20] 10 CFR 429.12(f).

[21] *See* 76 FR 12422, 12429 (Mar. 7, 2011).

[22] 10 CFR 429.14(a)(2)(i).

[23] The final rule contains a non-substantive change to the language in section 305.5(a) to reflect recent changes in the location of DOE testing and sampling provisions in 10 CFR Parts 429 and 430.

[24] The final amendments do not eliminate direct reporting to the FTC altogether, because EPCA requires manufacturers to submit annual reports to the FTC containing ''relevant data respecting energy consumption and water use developed in accordance with'' applicable DOE test procedures. 42 U.S.C. 6296(b)(4).

[25] Consistent with the current FTC Rule (305.8) and as required by EPCA (42 U.S.C. 6296(b)), the final rule contains a technical correction indicating that ceiling fan reports must contain a ''starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model).''

performance. These rules allow manufacturers to label their products with higher energy usage numbers (*e.g.,* estimated annual energy cost) than test results for the product indicate. This approach should have no negative impact on consumers because these products may be more energy-efficient than their labels indicate. The Commission does not need to amend the Rule, which already directs manufacturers to derive their energy consumption figures using DOE testing protocols because DOE regulations specifically allow this practice.

Lastly, the FTC will continue to allow manufacturers to submit data through certification bodies or other entities (*e.g.,* testing laboratories) acting on their behalf. This approach is consistent with DOE requirements.[26] The record identifies no reason to change this practice.

B. Web Site and Paper Catalog Disclosures

Background: In the NPRM, the Commission proposed several amendments to enhance the energy information available to consumers in ''catalogs'' (*i.e.,* paper catalogs and Web sites selling covered products),[27] consistent with the Commission's recently issued requirements for television labels.[28] First, the Commission proposed to require retail Web sites to post the full EnergyGuide or Lighting Facts label online. The current Rule requires online retailers to post the label content, but not the label image. Under the proposal, Web sites would post the full label or use an FTC-provided icon to link consumers to the full label. The proposed amendments specified the format and placement for the required information (*e.g.,* label or icon). Second, to ensure that retail Web sites have access to the label, the NPRM proposed to require manufacturers to post their EnergyGuide and Lighting Facts labels online and to retain the label online for two years after discontinuing a model. Finally, for paper catalogs, the Commission proposed to continue allowing retailers to use an abbreviated text disclosure in lieu of the full label, due to space and cost constraints.

Comments: Most comments generally supported the proposed requirements directing online retailers to post EnergyGuide and Lighting Facts labels. However, several raised concerns with particular details, including the use of Web site hyperlinks. Comments contained mixed support for the proposed requirement that manufacturers make their labels available online, and some commenters urged the Commission to reduce the proposed two-year retention period to six months.

Online Retailer Duty to Post Labels: Commenters generally expressed support for, or did not oppose, the revised Web site requirements for retailers, which conform to recently issued rules for television labels. For example, the consolidated comments from consumer and efficiency organizations note that such changes are important ''to ensure that the Rule remains useful as consumer purchasing and consumer research increasingly migrate online.''

However, several comments opposed the Commission's proposal to allow online retailers to use a hyperlink icon from the product page to link consumers to the required label.[29] These commenters argued that the label must appear on the product page itself.[30] In their opinion, consumers may not realize the icon is a link, or understand where the link leads, or may simply find the link inconvenient.[31] In addition, they suggested that consumers may decide not to view the label at all if the Web site requires them to download a PDF or other file to their computer. Given the limited time that consumers review Web site information, the consolidated efficiency and energy group comments explained that the online label must be ''conspicuous, easily accessible, and an intrinsic part of the description of the product in order for it to be useful to and used by consumers.'' They suggested that retailers could minimize the Web page space consumed by labels with a hover or ''mouseover'' feature, which would allow consumers to view labels without clicking an icon.

In contrast, Whirlpool argued that the inclusion of the full label itself ''would dramatically alter the ability of manufacturers (or retailers) to display product photos and descriptive information'' on product pages. In addition, Whirlpool asserted that such an approach would significantly reduce the ''readability and usability of these pages.''

Manufacturer Duty to Post Labels: The comments contained mixed views on the proposal requiring manufacturers to post labels online. Consumer and efficiency groups supported the proposed changes; appliance manufacturers did not oppose them but recommended modifications; and heating and cooling equipment manufacturers criticized them.

Consumer and efficiency groups urged adoption of the proposed provision, noting that it will allow retailers to download labels and repost them on their own Web sites. In their view, the requirement will allow consumers to view labels missing from retailer sites and otherwise make it easier to locate product efficiency information.

Appliance manufacturers[32] did not oppose the proposal but raised concerns about having to continue to post labels two years after discontinuing a model's production.[33] AHAM stated that the proposed timeframe is ''far too long and burdensome for manufacturers'' and fails to provide ''corresponding benefit.''[34] It explained that the two-year period would raise significant complications when the Commission requires changes to the label content (*e.g.,* through range or cost updates), necessitating label changes for models that are no longer in production. To avoid such problems, it suggested a six-month retention period. AHAM also asked the Commission to clarify whether the online label disclosure would apply to products no longer in production when the proposed rule becomes effective.[35]

[26] 10 CFR 429.12(g).

[27] The Rule's definition of ''catalog'' encompasses both print and online formats. The current rule defines ''catalog'' as ''printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.'' 16 CFR 305.2(h).

[28] 76 FR 1038 (Jan. 6, 2011) (television labels).

[29] Pacific Gas and Electric Company (PG&E), Southern California Edison, and consolidated comments from efficiency and consumer groups.

[30] The consolidated comments from consumer and efficiency organizations acknowledged that the proposed icon, with its explanatory text, was preferable to the icon currently required for televisions, which contains no such text. However, these organizations argued that any link allowed by the Rule should display the model's estimated annual operating cost, to provide this important information even if consumers do not click on the link to the full label.

[31] PG&E, Southern California Edison, and consolidated consumer and efficiency organizations comments.

[32] Whirlpool noted that it already posts labels for its products online.

[33] NEMA indicated that there was no consensus among its members on this proposal.

[34] BSH Home Appliances echoed AHAM's comments on these issues.

[35] Recent AHRI comments in a separate proceeding involving furnace and air conditioner labels (77 FR 33337 (June 6, 2012)) argued that the two-year retention period conflicts with new ''DOE guidance on discontinued models, which requires that basic models be removed from public Web sites once DOE is notified.'' AHRI Comments # 560904–00008 (Aug. 6, 2012). *http://www.ftc.gov/os/comments/regionaldisclosurenprm/index.shtm.* After consultation with DOE staff, the FTC staff has identified no such requirement in DOE's certification rules. *See* 10 CFR 429.12(d).

Finally, heating and cooling equipment manufacturers opposed the proposal. A.O. Smith, a water heater manufacturer, argued that the proposed requirement will force manufacturers to expend considerable time and resources for a service that the majority of retailers will not use. In AHRI's view, under the current rule, manufacturers already provide adequate product information to retail catalog sellers. In addition, AHRI argued that the proposed requirement will create a burdensome and complicated process for companies that sell private-labeled products procured from other manufacturers.[36] Smith also noted that manufacturers generally do not maintain a Web site for models they sell to private labelers. It further explained that merchants, to save time and avoid errors, generally rely on direct communication with manufacturers to obtain product information.

Paper Catalogs: Finally, Whirlpool concurred with continuation of the current practice of allowing abbreviated text disclosure in printed catalogs. No commenters opposed this proposal.[37]

Discussion: The Commission amends the Rule's catalog requirements as proposed, with a few minor changes discussed below. Generally, the amendments require Web site sellers to display the full EnergyGuide or Lighting Facts labels on the product page or through a hyperlink from that page, establish specific Web site format requirements, and require manufacturers to post labels for their products on a publicly available Web site. These revised Web site requirements should make it easier for consumers to compare the energy performance of products as they shop and research products online. The changes also will provide a clear, consistent process that manufacturers and retailers must follow to deliver energy information to online consumers. The final rule requires manufacturers to continue posting their labels online for six months after discontinuing production of the model, instead of the proposed two-year period. Finally, manufacturers will have six months to comply with these new requirements, and online retailers will have one year. The amendments do not change requirements for paper catalogs.

Retail Web sites: The final amendments require Web sites selling products with the EnergyGuide or Lighting Facts label to display the full label either on the product page or through a hyperlink. These provisions mark a departure from the current online requirements, which allow abbreviated, text-only energy disclosures. The Commission allowed these short disclosures in the past due to space constraints and the costs associated with printing the full label in paper catalogs.[38] However, during the television labeling rulemaking, the Commission determined that this rationale does not apply to Web sites. Accordingly, the Commission required Web sites selling televisions to include the full label or a special icon linking to the full label.[39]

The Commission does not agree with commenters that the full label must appear on the product page with no option to provide a hyperlink. Depending on the design of the Web site, a full label could crowd and clutter product pages, reducing the space available to display photos and other information. Although, as suggested by comments, a hover or ''mouseover'' feature (presumably coupled with a small, thumbnail label image) could mitigate such problems, the record does not demonstrate that a thumbnail-sized label would be more effective than the icon link, a common Web site feature familiar to consumers.[40] Both approaches require consumers to direct their mouse to a specific location. However, the Commission agrees with commenters that retail Web sites should not require consumers to save files in order to view the labels. Accordingly, the final rule language specifically prohibits this practice.

The final amendments require Web site sellers either to place the full label on the product's detailed description page or, to minimize design impact on their sites, to use a small EnergyGuide or Lighting Facts logo icon provided by FTC, which will link to the full label. The amendments allow Web sites to scale the icon (as well as the label) appropriately to accommodate their layout, as long the labels and icons remain readable and recognizable. The new icon applies to all products subject to the EnergyGuide or Lighting Facts requirements, including televisions. As proposed, the required icon in the final amendments integrates the text ''Click for this product's energy information'' into the icon design. This design, which differs slightly from the current television icon, should reduce the likelihood that consumers will view the icon as an endorsement or general claim about a product's environmental quality, rather than as an energy cost disclosure.[41]

Under the amendments, online sellers have some flexibility in how they display the label. For example, they may use a thumbnail image as long as consumers can recognize the image and read it using a hover, ''mouseover,'' or similar feature that magnifies the label. For general service lamps, online sellers may post an image of the manufacturer's package bearing the Lighting Facts label, as long as consumers can read the label by, for example, magnifying the package image to read the label using a mouseover or similar feature. In addition, online sellers may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended rule.

The final amendments also provide specifications regarding the format and placement of the required information on Web sites. Consistent with the NPRM,[42] the final rule requires that the label or icon appear ''clearly and conspicuously and in close proximity to the covered product's price.''[43] This requirement, incorporated into the new television label provisions, should ensure that consumers can easily view the label or icon without excessive scrolling or clicking, and still provide flexibility to Web site designers. The label or icon need only appear on ''each Web page that contains a detailed description of the covered product and its price,'' rather than alongside every image of a covered product on the site. The Commission does not agree with

[36] Generally, a private labeler purchases products from a manufacturer and markets those products under its own brand name. EPCA defines a private labeler as an entity, other than the product manufacturer, that owns a product brand or trademark other than the product manufacturer. 42 U.S.C. 6291(15).

[37] NEMA indicated that no consensus existed among its members on the issue of online disclosures and provided no details regarding the merits of the proposal.

[38] 72 FR 49948, 49961 (Aug. 29, 2007).

[39] 76 FR 1038.

[40] Nothing in the final rule prohibits online retailers from using a ''mouseover'' or hover feature to allow consumers to magnify label images placed directly on the product page.

[41] Web site sellers should not use language implying that the icon constitutes an endorsement or an environmental claim. For example, adding the words ''EnergyGuide Rated'' near the icon could suggest that the icon represents a product endorsement or a ''green'' claim about the product. Such language would probably be deceptive under Section 5 of the FTC Act, 15 U.S.C. 45.

[42] 77 FR at 15301.

[43] Similarly, the amendments require that Web site disclosures for required non-label markings or text (*e.g.,* gallons per minute for showerheads and faucets) be displayed clearly and conspicuously, and in close proximity to the product's price on the Web page. Because the Rule does not require a specific product label for these short and simple disclosures, the amendments do not impose any design or font size requirements for these disclosures on Web site, other than that they be clear and conspicuous.

comments suggesting the hyperlink icon should disclose the model's specific estimated energy cost. It is not clear whether any benefits associated with such a disclosure would justify the significant burden this requirement would impose on retailers.

Manufacturer Duty to Post Labels: The amendments require manufacturers to make images of their EnergyGuide and Lighting Facts labels available on a Web site for linking and downloading by both paper catalogs and Web sites.[44] As discussed in the NPRM and the comments, this requirement will assist retailers in complying with the Rule and help ensure consumers can view the labels when they are shopping online. In particular, it will provide retail sellers with easy access to the labels for the products they offer for sale, even if they do not handle the labeled products directly. It will also eliminate the need for these retailers to affirmatively request labels from various manufacturers for each individual product sold on their Web sites and catalogs. The Commission does not expect that the amendments, which are consistent with current television label rules,[45] will impose undue burden because industry members have already created labels under Rule and should have them readily available for posting on Web sites.

Under the final rule, the labels must remain available online for six months after the manufacturer ceases to produce the model, instead of two years as proposed in the NPRM. The Commission agrees with commenters that the proposed two-year period could create a significant burden for manufacturers unmatched by the potential benefits for online retailers and ultimately, consumers. Specifically, given periodic FTC-required label updates, the two-year retention period could force manufacturers to revise labels for obsolete products.[46] At the same time, there is no clear evidence that online retailers have a strong need for labels from models discontinued for six months or more. Should the six-month period prove to be insufficient to provide needed labels to retailers in the future, the Commission may revisit the issue.[47]

The new posting requirement applies to manufacturers, not private labelers.[48] Manufacturers must ensure that the labels are available on a publicly accessible site. However, nothing prohibits manufacturers from arranging with private labelers to post the labels on the private labelers' Web sites.[49] The Rule does not mandate that manufacturers post labels for the products they produce on their own sites. Other labeling responsibilities under the Rule have applied to both manufacturers and their private labelers for decades.[50] Accordingly, the Commission does not expect that this new online label disclosure requirement should unduly complicate coordination between manufacturers and private labelers.[51]

Compliance Period: Consistent with the recent television labeling requirements, the final rule staggers the compliance dates for these new requirements. Specifically, manufacturers must make their labels available online by July 15, 2013. In turn, online retailers must begin displaying labels for the covered products they sell by January 15, 2014. These compliance dates should provide industry members adequate time to comply with the new requirements.

Paper Catalogs: Finally, for paper catalogs, the Rule continues to allow an abbreviated text disclosure in lieu of the full label. Due to the space and cost constraints involved with paper catalogs, inclusion of the entire label may be impractical.[52] No comments opposed this approach.

C. Definitions of Refrigerator and Refrigerator-Freezer

The Commission amends the Rule's refrigerator definitions to match DOE regulations. On December 16, 2010,[53] DOE issued revised definitions for the terms ''electric refrigerator'' and ''electric refrigerator-freezer.'' In the NPRM, the Commission proposed to conform its own definitions for these terms to ensure consistency. No comments opposed the proposal. AHAM and BSH supported the changes, explaining that they would provide consistency and clarity for regulated parties and consumers.[54]

D. Prohibited Acts Provision

Consistent with the NPRM, the final rule clarifies the penalty assessments for several non-labeling violations listed in section 305.4(b). These violations include refusal to allow access to records, refusal to submit required data reports, refusal to permit FTC officials to observe testing, refusal to supply units for testing, failure to disclose required energy information in Web sites and paper catalogs, and failure of manufacturers to make labels available online.[55] The current Rule does not specify the method (*e.g.,* per day) for assessing penalties for these non-labeling violations.[56] The amendments clarify that these violations are subject to civil penalties calculated on a per-model, per-day basis. The per-model, per-day basis is consistent with EPCA's enforcement provisions as well as DOE enforcement guidance for the same and

[44] The amendments also include language conforming to the Rule's prohibited acts section (305.4) indicating that a manufacturer's failure to post labels online is subject to civil penalties. See 42 U.S.C. 6296(a), 6302(a)(4). The new requirements stem from EPCA's mandate, in the statute's catalog-related provision, that manufacturers ''provide'' a label and from the Commission's general authority to dictate the manner in which labels are displayed. 42 U.S.C. 6294(c)(3) & 6296(a).

[45] 76 FR 1038.

[46] The six-month period is also consistent with EPCA's provisions directing manufacturers to change labels and other energy representations 180 days after DOE amends its test procedures for specific products. 42 U.S.C. 6293(c).

[47] As specified in section 305.6, the final rule does not apply to models discontinued prior to the effective date.

[48] EPCA states that ''Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule.'' 42 U.S.C. 6296(a). The definition of ''manufacturer'' under EPCA includes importer. 42 U.S.C. 6291(10)–(12).

[49] DOE follows a similar approach to its certification requirements by allowing manufacturers to arrange with third parties, including private labelers, to display product labels on Web sites. See 76 FR 12422, 12427 (Mar. 7, 2011). In addition, though FTC reporting requirements apply solely to manufacturers, the FTC accepts submissions through third parties. See 16 CFR 305.8.

[50] See 16 CFR 305.4(a).

[51] A.O. Smith also argued that many retailers do not use manufacturer Web sites to obtain labels. Nothing in the final rule prohibits manufacturers from also providing labels to their retail partners through means other than the Web site. Nevertheless, the requirement will ensure that labels are available online for those that do use manufacturer Web sites.

[52] Consistent with the NPRM, the amendments also state that, if paper catalogs display more than one covered product model on a page, the seller may disclose the utility rates or usage assumptions underlying the energy information (*e.g.,* 10.65 cents per kWh, 8 cycles per week) only once per page for each type of product (*e.g.,* a single footnote for all refrigerators advertised on the page), rather than repeating the information for each advertised model. The disclosure must be clear and conspicuous. In addition, the final rule language covers heating and cooling equipment disclosures, text inadvertently omitted from the proposed language.

[53] 75 FR 78810.

[54] The consolidated comments from consumer and energy organizations also supported the proposal.

[55] *See* 16 CFR 305.4(b); *see also* 42 U.S.C. 6296(b)(2),(4) and 6303(a)(3) (data reports and records access), 6296(b)(5) (testing access), 6296(b)(3) (units for testing), and 6296(a) (catalog sales and manufacturer responsibilities).

[56] In contrast, the current rule specifies the basis for labeling violations. Specifically, consistent with EPCA (42 U.S.C. 6303(a)), section 305.4(a) states that labeling violations are assessed on a *per-unit* basis.

similar provisions.[57] For example, a manufacturer's refusal to submit required reports accrues a fine of up to $110 per day for each model subject to the reporting requirements. In addition, a Web site seller's failure to post required label information accrues a fine of up to $110 per day for each model on the Web site lacking the disclosure. No comments opposed the proposal.[58]

E. Rule Title

As proposed in the NPRM, the Commission shortens the Rule's title. When originally promulgated in 1979, the Rule applied only to appliances. Subsequently, the Commission expanded the Rule to include lighting, plumbing, and consumer electronics. Accordingly, the Commission proposed to change the Rule's title from ''Part 305—Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy And Conservation Act (''Appliance Labeling Rule'')'' to ''Part 305—Energy And Water Use Labeling For Consumer Products Under The Energy Policy and Conservation Act (''Energy Labeling Rule'').'' No comments opposed this proposal.

F. ENERGY STAR Logo on Heating and Cooling Equipment Labels

As proposed in the NPRM, the final amendments to § 305.12 allow a wider version of the ENERGY STAR logo on heating and cooling equipment. This minor, non-substantive change accommodates new ENERGY STAR logos developed by the Environmental Protection Agency for these products. No comments opposed this proposal.

G. Technical Corrections and Clarifications

The final amendments also contain four minor, technical corrections or clarifications for television labeling, rule language regarding room air conditioner capacity, terminology related to the ENERGY STAR program, and three-way bulb labeling. First, as noted in the NPRM,[59] the amendments clarify that manufacturers of televisions with screen sizes of nine inches or less (measured diagonally) may print or affix the EnergyGuide label on the product package.[60] Second, the amendments correct the room air conditioner range table in Appendix E to indicate that the applicable room air conditioner capacity for labeling purposes is ''Btu per hour,'' not ''Btu per year.'' Third, in rule sections related to the ENERGY STAR program, the final rule changes the term ''qualified'' to ''certified'' to reflect the terminology currently employed by the ENERGY STAR program.[61] Fourth, the amendments change the Rule language for labeling bulbs that operate at multiple, separate light levels (*e.g.,* ''3-way'' bulbs) to clarify that such language applies to all covered bulb technologies. Currently, the Rule's language addressing such bulbs applies only to incandescent bulbs.[62]

IV. Paperwork Reduction Act

The Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA).[63] Prior to the FTC's March 15, 2012 NPRM, OMB had approved the Rule's pre-existing information collection requirements through Jan. 31, 2014 (OMB Control No. 3084–0069). As described below, the final amendments modify (to a minor degree) the Rule's labeling and reporting requirements.[64] Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

Manufacturer EnergyGuide Images Online: The amendments require manufacturers to post images of their EnergyGuide and Lighting Facts labels online. Given approximately 15,000 total models[65] at an estimated five minutes per model,[66] this requirement will entail a burden of 1,250 hours.[67] Assuming graphic designers at a mean hourly wage of $23.41 per hour will implement the additional disclosure requirement,[68] the associated labor cost would be approximately $29,300 per year.

Catalog Disclosures: The Commission's past estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (*see, e.g.,* 71 FR 78057, 78062 (Dec. 28, 2006)).[69] The one-time adjustment under the amendments has effectively been accounted for by this prior assumption and the associated burden estimates for catalog sellers. Thus, the Commission believes no modification to existing burden estimates for catalog sellers is necessary.

Estimated annual non-labor cost burden: Any capital costs associated with the amendments are likely to be minimal.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[70]

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic

[57] *See* 42 U.S.C. 6302, 6303; 16 CFR 305.4(a); and DOE ''Guidance on the Imposition of Civil Penalties for Violations of EPCA Conservation Standards and Certification Obligations,'' *http://www.doe.gov/sites/prod/files/gcprod/documents/Penalty_Guidance_5_7_2010___final_%282%29.pdf.*

[58] The consolidated consumer and efficiency organizations comments specifically supported the proposal, noting that any other interpretation would lead to absurd results.

[59] 77 FR 15303.

[60] The **Federal Register** notice accompanying the television labeling amendments to the Rule stated that televisions smaller than nine inches may be labeled on the box rather than on the screen. However, the final rule language did not reflect this. See 76 FR at 1044.

[61] Though the Commission did not seek comment on these minor changes to Appendix E and the ENERGY STAR-related language, these amendments involve minor, technical corrections to the background information in the Rule. Accordingly, the Commission finds good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

[62] The Commission proposed this amendment in an August 1, 2011 notice related to light bulb labeling (76 FR 45715). No comments opposed the change.

[63] 44 U.S.C. 3501 *et seq.*

[64] For reporting requirements, the amendments allow manufacturers to submit data to the DOE in lieu of the FTC. This will not affect the PRA burden because the Rule, as directed by the EPCA, will continue to require reporting to the FTC, even if manufacturers may fulfill that requirement by reporting to the DOE.

[65] This is an FTC staff estimate based on data submitted by manufacturers to the FTC pursuant to the current Rule.

[66] This estimate is based on FTC staff's general knowledge of industry practices.

[67] Unlike retail Web sites that already have established Web pages for the products they offer, some manufacturers may have to create new Web pages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

[68] *See* U.S. Department of Labor, ''Occupational Employment and Wages—May 2011'', issued March 27, 2012, Table 1 at p.13 (mean hourly wages), available at *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.*

[69] This assumption is conservative because the number of incremental additions to the catalog and their frequency is likely to be much lower after initial start-up efforts have been completed.

[70] 5 U.S.C. 603–605.

impact of implementing the amendments will be significant. The Commission plans to provide businesses with ample time to implement the requirements. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on affected entities.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. Comments that involve impacts on all entities are discussed above.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for various affected entities are as follows: refrigerator manufacturers—up to 1,000 employees; other appliance manufacturers—up to 500 employees; appliances stores—up to $10 million in annual receipts; television stores—up to $25.5 million in annual receipts, and light bulb manufacturers—up to 1,000 employees. The Commission estimates that fewer than 600 entities subject to the proposed Rule's requirements qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the proposed changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on small entities. Online sellers would have to make changes to ensure their Web sites provide the full EnergyGuide or Lighting Facts label. However, the Commission has provided them with ample time to incorporate the changes into their normal Web site updates. There should be minimal capital costs associated with the amendments. As estimated above, the proposed Rule imposes new requirements on fewer than 600 small businesses. The changes are likely to be made by graphic designers.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. In fact, the proposed amendments should reduce duplication between FTC and DOE reporting requirements.

F. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. The Commission did not receive any comments on those specific issues. However, to minimize the impacts on manufacturers and retailers in posting the required labels, the Commission has set the effective date for the new catalog requirements at January 15, 2014.

Final Rule

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Revise the heading of part 305 to read as set forth above.

■ 3. In § 305.3, revise paragraphs (a)(1) and (2) to read as follows:

§ 305.3 Description of covered products.

(a)(1) Electric refrigerator means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

(2) Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

■ 4. In § 305.4, revise paragraph (b) introductory text and add paragraph (b)(6) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(b) Subject to enforcement penalties assessed per model per day of violation pursuant to 42 U.S.C. 6303 and adjusted for inflation by § 1.98 of this chapter, it shall be unlawful for any manufacturer or private labeler knowingly to:

* * * * *

(6) Fail to make a label for a covered product available on a publicly accessible Web site in accordance with § 305.6. This provision applies only to manufacturers.

* * * * *

■ 5. Revise § 305.5 to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

(a) Unless otherwise stated in paragraphs (b), (c), (d), or (e) of this section, the content of any disclosures required by this part must be determined in accordance with the testing and sampling provisions required by the Department of Energy as set forth in subpart B to 10 CFR part 430, part 431, and 10 CFR 429.11.

(b) For any representations required by this part but not subject to Department of Energy requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.

(c) For representations of the light output for general service light-emitting diode (LED or OLED) lamps, the Commission will accept as a reasonable basis scientific tests conducted according to IES LM79.

(d) Determinations of estimated annual energy consumption and estimated annual operating (energy) costs of televisions must be based on the procedures contained in the ENERGY STAR Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug–2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or at *http://www.energystar.gov/ia/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf* [Telephone: ENERGY STAR Hotline: 1–888–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580 [Telephone: 1–202–326–2830]; and at the National Archives and Records Administration, at *http://www.archives.gov/federal-register/cfr/ibr-locations.html* [Telephone: 1–202–741–6030].

(e) Representations for ceiling fans under section 305.13 must be derived from procedures in 10 CFR 430.23.

■ 6. Revise § 305.6 to read as follows:

§ 305.6 Duty to provide labels on Web sites.

For each covered product that a manufacturer distributes in commerce after July 15, 2013, which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of that model ceases.

■ 7. In § 305.8, revise paragraphs (a) and (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department of Energy certification requirements in 10 CFR part 429 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.

(2) Manufacturers of ceiling fans shall submit annually a report containing the brand name, model number, diameter (in inches), wattage at high speed excluding any lights, airflow (capacity) at high speed for each basic model in current production, and starting serial number, date code or other means of identifying the date of manufacture with the first submission for each basic model. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.

(3) This section does not require reports for televisions and general service light-emitting diode (LED or OLED) lamps.

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerators-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	July 1.
Furnaces	May 1.
Pool heaters	May 1.
Clothes washers	Oct. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Ceiling fans	Mar. 1.
Urinals	Mar. 1.
Metal halide lamp fixtures	Sept. 1.
General service fluorescent lamps.	Mar. 1.
Medium base compact fluorescent lamps.	Mar. 1.
General service incandescent lamps.	Mar. 1.

* * * * *

■ 8. In § 305.11, revise paragraph (f)(12)(iii) to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(f) * * *

(12) * * *

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 9. In § 305.12, revise paragraphs (f)(8)(iii) and (g)(9)(iii) to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) * * *

(8) * * *

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of

Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(g) * * *

(9) * * *

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 10. In § 305.15, revise paragraphs (b)(3)(vi) and (d)(4) to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(b) * * *

(3) * * *

(vi) The ENERGY STAR logo as illustrated in Prototype Label 6 to appendix L for certified products, if desired by the manufacturer or private labeler. Only manufacturers or private labelers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers or private labelers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

* * * * *

(d) * * *

(4) For any covered product that is a general service lamp and operates at discrete, multiple light levels (e.g., 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a ''/'' (e.g., 800/1600/2500 lumens) if they appear on the same line on the label.

* * * * *

■ 11. In § 305.17, revise paragraph (d) introductory text and paragraphs (e)(1) and (g), and add paragraph (h) to read as follows:

§ 305.17 Television labeling.

* * * * *

(d) *Label types.* Except as provided in paragraph (i), the labels must be affixed to the product in the form of either an adhesive label, cling label, or alternative label as follows:

* * * * *

(e) *Placement*—(1) In general. Except as provided in paragraph (i), all labels must be clear and conspicuous to consumers viewing the television screen from the front.

* * * * *

(g) *Distribution of Labels:* Consistent with section 305.6 of this part, for each covered television that a manufacturer distributes in commerce which is required by this part to bear an EnergyGuide label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of the model ceases.

(h) *Labels for small televisions:* For television with screens measuring nine inches or less diagonally, manufacturers may print the label required by this section on the primary display panel of the product's packaging or affix a label to the packaging in lieu of affixing a label to the television screen or bezel. The size of the label may be scaled to fit the packaging size as appropriate, as long as it remains clear and conspicuous.

■ 12. Revise § 305.20 to read as follows:

§ 305.20 Paper catalogs and Web sites.

(a) Covered products offered for sale on the Internet. Any manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet Web site in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* (i) Products required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions must display, for each model, a recognizable and legible image of the label required for that product by this Part. The Web site may hyperlink to the image of the label using the sample EnergyGuide and Lighting Facts icons depicted in appendix L. The Web site must hyperlink the image in a way that does not require consumers to save the hyperlinked image in order to view it.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product:

(A) Showerheads, faucets, water closets, and urinals. The product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.16.

(B) General service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures. A capital letter ''E'' printed within a circle.

(2) *Format.* The required Web site disclosures, whether label image, icon, or text, must appear clearly and conspicuously and in close proximity to the covered product's price on each Web page that contains a detailed description of the covered product and its price. The label and hyperlink icon must conform to the prototypes in appendix L, but may be altered in size to accommodate the Web page's design, as long as they remain clear and conspicuous to consumers viewing the page.

(b) Covered products offered for sale in paper catalogs. Any manufacturer, distributor, retailer, or private labeler that advertises a covered product in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* (i) Products required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products required by this Part to bear EnergyGuide or Lighting Facts labels illustrated in appendix L (refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service fluorescent lamps, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this Part, or make a text disclosure as follows:

(A) Refrigerator, refrigerator-freezer, and freezer. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on ____

cents per kWh. For more information, visit *www.ftc.gov/energy*.''

(B) Room air conditioners and water heaters. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a [electricity, natural gas, propane, or oil] cost of [$ ____ per kWh, therm, or gallon]. For more information, visit *www.ftc.gov/energy*.''

(C) Clothes washers and dishwashers. The capacity of the model for clothes washers determined in accordance with § 305.7 and the estimated annual operating cost for clothes washers and dishwashers determined in accordance with § 305.5 and appendix K, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and __ cents per kWh for electricity and $__ per therm for natural gas. For more information, visit *www.ftc.gov/energy*.''

(D) General service fluorescent lamps or general service lamps. All the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp's package, and, for general service lamps, a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost and life is based on 11 cents per kWh and 3 hours of use per day. For more information, visit *www.ftc.gov/energy*.'' For the ''Light Appearance'' disclosure required by § 305.15(b)(3)(iv), the catalog need only disclose the lamp's correlated color temperature in Kelvin (e.g., 2700 K). General service fluorescent lamps or incandescent reflector lamps must also include a capital letter ''E'' printed within a circle and the statement described in § 305.15(d)(1).

(E) Ceiling fans. All the information required by § 305.13.

(F) Televisions. The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit *www.ftc.gov/energy*.''

(G) Central air conditioners, heat pumps, and furnaces (including boilers), and pool heaters. The capacity of the model determined in accordance with § 305.7 and the energy efficiency or thermal efficiency ratings determined in accordance with § 305.5 on each page that lists the covered product.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products not required by this Part to bear labels with specific design characteristics illustrated in appendix L (showerheads, faucets, water closets, urinals, fluorescent lamp ballasts, and metal halide lamp fixtures) must make a text disclosure for each covered product identical to those required for Internet disclosures under § 305.20(a)(1)(ii).

(2) *Format.* The required disclosures, whether text, label image, or icon, must appear clearly and conspicuously on each page that contains a detailed description of the covered product and its price. If a catalog displays an image of the full label, the size of the label may be altered to accommodate the catalog's design, as long as the label remains clear and conspicuous to consumers. For text disclosures made pursuant to § 305.20(b)(1)(i) and (ii), the required disclosure may be displayed once per page per type of product if the catalog offers multiple covered products of the same type on a page, as long as the disclosure remains clear and conspicuous.

Appendix E to Part 305 [Amended]

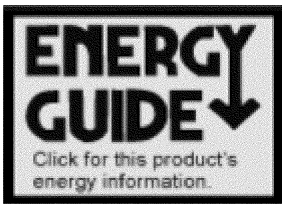
■ 13. In Appendix E, revise the column heading ''Manufacturer's rated cooling capacity in Btu's/yr'' in the teable to read ''Manufacturer's rated cooling capacity in Btu's/hr.''

Appendix L to Part 305 [Amended]

■ 14. In Appendix L, remove ''Sample Icon 13 Web site Link Icon'' and add in its place ''Sample EnergyGuide Icon For Use on Web sites'' and ''Sample Lighting Facts Icon For Use on Web sites'' to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *



SAMPLE ENERGYGUIDE ICON FOR USE ON WEB SITES

SAMPLE LIGHTING FACTS ICON FOR USE ON WEBSITES

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–00116 Filed 1–9–13; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 51

[EPA–HQ–OAR–2003–0076; FRL–9767–8]

RIN 2060–AH37

Review of New Sources and Modifications in Indian Country: Notice of Action Partially Granting Petition for Reconsideration and Denying Request for Administrative Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action partially granting petition for reconsideration and denying request for administrative stay.

SUMMARY: The EPA is providing notice that it has responded to a petition for reconsideration and a request for an administrative stay of certain provisions of the rule titled, ''Review of New Sources and Modifications in Indian Country'' published on July 1, 2011. The EPA received letters dated August 30, 2011, and November 4, 2011, petitioning for reconsideration of various aspects of the minor new source review (NSR) rule (the Petitions) and one provision of the nonattainment major NSR rule pursuant to the Clean Air Act (CAA) from the American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA) and America's Natural Gas Alliance (ANGA) (collectively, the Petitioners). In the letter dated August 30, 2011, the Petitioners asked, among other things, that the EPA reconsider the synthetic minor source provisions of the minor NSR rule and requested that the EPA stay the effective date of the minor NSR rule as it relates to synthetic minor sources pending its reconsideration. In

the letter dated November 4, 2011, the Petitioners asked for reconsideration of several aspects of the minor NSR rule and one aspect of the nonattainment major NSR rule. The EPA considered the Petitions, including the request for an administrative stay, along with information contained in the rulemaking docket, in reaching a decision on the Petitions generally and the request for an administrative stay specifically. In letters to the Petitioners dated December 19, 2012, the EPA Administrator, Lisa P. Jackson, expressed her intent to grant reconsideration of several aspects of the Petitions and denied reconsideration of several other aspects raised in the Petitions, including the request for administrative stay. She took no action at this time with respect to several other issues raised in the Petitions. The denials of reconsideration and of the request for an administrative stay constitute final agency action.

DATES: January 10, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Montañez, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–3407; email address: *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Where can I get copies of this document and other related information?

This **Federal Register** notice, the petitions for reconsideration and the letter granting certain aspects of the petitions for reconsideration and denying the request for an administrative stay are available in the docket that the EPA established for the final rule titled, ''Review of New Sources and Modifications in Indian Country,'' published on July 1, 2011, 76 FR 38748, under Docket ID No. EPA–HQ–OAR–2003–0076. The table below identifies the Petitioners, the dates the EPA received the Petitions, the document identification number of the Petitions, the date of the EPA's response, and the document identification number for the EPA's response.

Petitioners	Dates of petitions to the EPA	Petition: document No. in docket	Date of the EPA response	The EPA response: document No. in docket
American Petroleum Institute (API)/Independent Petroleum Association of America (IPAA)/America's Natural Gas Alliance (ANGA).	08/30/2011 and 11/04/2011.	0172	December 19, 2012	0173

Note: All document numbers listed in the table are in the form of ''EPA–HQ–OAR–2003–0076–xxxx.''

All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID. No. EPA–HQ–OAR–2003–0076, EPA West, Room 3334, 1301 Constitution Avenue, North West, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

In addition to being available in the docket, an electronic copy of this **Federal Register** notice and the EPA's response letter to the petitioners are also available on the World Wide Web at *http://www.epa.gov/nsr* and on the Tribal Air home page at *http://www.epa.gov/oar/tribal.*

II. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 11, 2013.

Dated: December 27, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2012–31742 Filed 1–9–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0781; FRL–9768–2]

Determination of Attainment for the Yuba City-Marysville Nonattainment Area for the 2006 Fine Particle Standard; California; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Yuba City-Marysville nonattainment area in California has attained the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2009–2011 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule is effective on February 11, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0781 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g.,

Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, (415) 972–3963, or by email at *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

Table of Contents

I. Summary of Proposed Action

On October 30, 2012 (77 FR 65646), EPA proposed to determine that the Yuba City-Marysville nonattainment area [1] has attained the 2006 24-hour NAAQS [2] for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$).

In our proposed rule, we explained how EPA makes an attainment determination for the 2006 24-hour $PM_{2.5}$ NAAQS by reference to complete, quality-assured data gathered at a State and Local Air Monitoring Station(s) (SLAMS) and entered into EPA's Air Quality System (AQS) database and by reference to 40 CFR 50.13 (''National primary and secondary ambient air quality standards for $PM_{2.5}$'') and appendix N to [40 CFR] part 50 (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$''). EPA proposed the determination of attainment for the Yuba City-Marysville area based upon a review of the monitoring network operated by the California Air Resources Board (CARB) and the data collected at the one monitoring site operating during the most recent complete three-year period (i.e., 2009 to 2011). Based on this review, EPA found that complete, quality-assured and certified data for the Yuba City-Marysville area showed that the 24-hour design value for the 2009–2011 period was equal to or less than 35 μ/m^3 at the monitor site. See the data summary table on page 65648 of the October 30, 2012 proposed rule. We also noted that preliminary data available in AQS for 2012 indicates that the Yuba City-Marysville area continues to attain the NAAQS.

In our proposed rule, based on the proposed determination of attainment, we also proposed to apply EPA's Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS and thereby suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. See pages 65648–65650 of our October 30, 2012 proposed rule. In proposing to apply the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS, we explained how we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, PM_{10} and lead NAAQS.

Please see the October 30, 2012 proposed rule for more detailed information concerning the $PM_{2.5}$ NAAQS, designations of $PM_{2.5}$ nonattainment areas, the regulatory basis for determining attainment of the NAAQS, CARB's $PM_{2.5}$ monitoring network, EPA's review and evaluation of the data, and the rationale and implications for application of the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS.

II. Public Comments and EPA Responses

EPA's proposed rule provided a 30-day public comment period. During this period, we received no comments.

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the Yuba City-Marysville nonattainment area in California has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on the most recent three years of complete, quality-assured, and certified data in AQS for 2009–2011. Preliminary data available in AQS for 2012 show that this area continues to attain the standard.

EPA is also taking final action, based on the above determination of attainment, to suspend the requirements for the Yuba City-Marysville nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS. EPA's final action is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) and the 1997 fine particulate matter standards (*see* 40 CFR 51.1004(c)).

Today's final action does not constitute a redesignation of the Yuba City-Marysville nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Yuba City-Marysville nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain nonattainment for this area until such time as EPA determines that California has met the CAA requirements for redesignating the Yuba City-Marysville nonattainment area to attainment.

If the Yuba City-Marysville nonattainment area continues to monitor attainment of the 2006 $PM_{2.5}$ NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 $PM_{2.5}$ NAAQS will remain suspended. If after today's action EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2006 $PM_{2.5}$ NAAQS, the basis for the suspension of the attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

IV. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

[1] The Yuba City-Marysville $PM_{2.5}$ nonattainment area includes Sutter County and the southwestern two-thirds of Yuba County. This nonattainment area lies within the Sacramento Valley Air Basin and lies between the Chico $PM_{2.5}$ nonattainment area to the north and the Sacramento $PM_{2.5}$ nonattainment area to the south.

[2] The 2006 24-hour $PM_{2.5}$ NAAQS is 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the 98th percentile of 24-hour concentrations.

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Nitrogen oxides, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: December 18, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. In § 52.247, paragraph (b) is added to read as follows:

§ 52.247 Control Strategy and Regulations: Fine Particle Matter.

* * * * *

(b) *Determination of Attainment:* Effective February 11, 2013, EPA has determined that, based on 2009 to 2011 ambient air quality data, the Yuba City-Marysville $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

[FR Doc. 2013–00177 Filed 1–9–13; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 78, No. 7
Thursday, January 10, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2011–0018]

RIN 3150–AI49

Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), and revise existing regulations governing security event notifications. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. The NRC is now proposing to further revise its regulations that address the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A to include as a class of designated facilities at-reactor, independent spent fuel storage installations (ISFSIs).

DATES: Submit comments on this supplemental proposed rule by February 25, 2013. Submit comments specific to the information collection burden aspects of this supplemental proposed rule by February 11, 2013. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: You may access information and comment submissions related to this supplemental proposed rule, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0018. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0018. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Email Comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax Comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail Comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand Deliver Comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret E. Stambaugh, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7069; email: *Margaret.Stambaugh@nrc.gov;* or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6557; email: *Phil.Brochman@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0018 when contacting the NRC about the availability of information for this supplemental proposed rule. You may access information related to this supplemental proposed rule, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0018.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section VIII, ''Availability of Documents,'' of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0018 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

A. Implementation of Section 161A of the AEA

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 109–58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding Section 161A, ''Use of Firearms by Security Personnel'' (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with authority that will enhance security at designated NRC licensee and certificate holder facilities. As required by Section 161A.d, the provisions of Section 161A took effect when the Commission, with the approval of the U.S. Attorney General, published the approved Firearms Guidelines in the **Federal Register** (FR) on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may be found on *http://www.regulations.gov* under Docket IDs NRC–2008–0465 and NRC–2011–0018.

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption or enhanced weapon authority. Section 161A also mandates that all security personnel with duties requiring access to covered weapons, as defined in the Firearms Guidelines, who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder, be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Background Check System (NICS).

B. October 2006 Proposed Rule—Implementation of Section 161A of the AEA

In parallel with the development of the Firearms Guidelines, the NRC initiated a rulemaking to develop implementing regulations. On October 26, 2006, the NRC published proposed regulations (71 FR 62664) to implement the provisions of Section 161A as part of a larger proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Power Reactor Security Requirements.'' These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (*i.e.,* facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for Section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority). The NRC had also indicated that it would consider making Section 161A authority available to additional classes of facilities, radioactive material, or other property (including ISFSIs) in a separate, future rulemaking.

C. February 2011 Proposed Rule—Implementation of Section 161A of the AEA

Once the approved Firearms Guidelines were published in the FR on September 11, 2009 (74 FR 46800), the NRC continued developing the proposed rulemaking based upon the Firearms Guidelines. On February 3, 2011, the NRC published proposed regulations in the FR (76 FR 6200) that would implement the provisions of Section 161A and make several changes to the security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided a total of 180 days to review and comment on the February 2011 proposed rule and associated guidance.

III. Discussion

Section 161A allows the NRC to authorize licensees and certificate holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the February 2011 proposed rule, an NRC licensee or certificate holder interested in obtaining Section 161A authority (either combined enhanced weapons authority and preemption authority or preemption authority alone) could voluntarily apply to the NRC to take advantage of this new authority. Licensees and certificate holders within the designated classes eligible to apply for Section 161A authority would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines.

In a recent letter, a licensee requested that the NRC grant preemption authority for two operating power reactors and the at-reactor ISFSI co-located at the plant site (ADAMS Accession No. ML113610556). The February 2011 proposed rule did not contemplate at-reactor ISFSIs under the applicability statement, but rather identifies ISFSIs as a class of facility that would be considered for inclusion under a future rulemaking. The staff's intent in the February 2011 proposed rule was first to establish the regulatory framework for granting preemption and enhanced weapons authority to those facilities deemed to be of greatest significance (*i.e.,* power reactors and Cat. I SSNM facilities). In light of the request from the licensee, the staff recommended to the Commission in SECY–12–0027 (ADAMS Accession No. ML113130015) that at-reactor ISFSIs be designated as a class of licensees eligible to apply for the authority granted under Section 161A. In Staff Requirements Memorandum SRM–SECY–12–0027 (ADAMS Accession No. ML12124A377), the Commission disapproved the staff's recommendation in SECY–12–0027 regarding the issuance of confirmatory orders for at-reactor ISFSIs. Instead, the Commission directed the staff to consider expanding the scope of the current enhanced weapons rule to include at-reactor ISFSIs. This supplemental proposed rule responds to the Commission's direction.

In this supplemental proposed rule, the NRC would add at-reactor ISFSIs to the scope of the enhanced weapons proposed rule. The NRC considers an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR parts 50 or 52. As previously noted, the NRC is taking this approach to address the facilities of highest concern first. At-reactor ISFSIs have been added

to the facilities of highest concern because the same security personnel and weaponry that protect a power reactor, also protect the at-reactor ISFSI. An ISFSI that is co-located with a power reactor facility that has been decommissioned (*i.e.,* the power complex and spent fuel pool have been removed), but has not yet terminated its reactor license, does not rely on the power reactor security force to implement its protective strategy. Therefore, an ISFSI co-located at a decommissioned power reactor is not considered an at-reactor ISFSI for the purposes of this supplemental rule. The NRC considers this approach consistent with that for a standalone ISFSI, which was never co-located with a power reactor.

The February 2011 proposed rule recommends adding two new sections to 10 CFR part 73. The proposed § 73.18(c) would identify the specific classes of licensee facilities, radioactive material, and other property designated by the Commission under Section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. The proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under Section 161A that would be subject to the firearms background check requirements. In this supplemental proposed rule, the NRC would designate three classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities.

In the February 2011 proposed rule that would implement the Firearms Guidelines, the NRC proposed amendments to 10 CFR part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues those proposed changes and adds to or modifies the following regulations in 10 CFR part 73:

- Section 73.2, Definitions.
- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

IV. Section-by-Section Analysis

A. Overview

The following section-by-section analysis discusses proposed revisions to the NRC's regulations that were not part of the proposed rule published on February 3, 2011 (76 FR 6200). At this time, the NRC is only seeking comments on the revisions proposed by this supplemental rule. The NRC will address public comments on both the February 2011 proposed rule and this supplemental proposed rule in the **Federal Register** notice for the final rule.

This supplemental proposed rulemaking to 10 CFR part 73 would revise two new sections (§§ 73.18 and 73.19) proposed to be added to the NRC's regulation in the February 2011 rule, and revise two existing sections (§§ 73.2 and 73.51) to make conforming changes.

B. Definitions (§ 73.2)

New definition for the term *At-reactor independent spent fuel storage installation* or *at-reactor ISFSI* would be added in alphabetical order to the definitions in § 73.2(a). The NRC would consider an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR parts 50 or 52.

C. Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws (§ 73.18)

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC continues to intend to specify any additional classes of authorized facilities, radioactive material, and other property in a separate, future rulemaking.

D. Firearms Background Checks for Armed Security Personnel (§ 73.19)

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC intends to specify any additional classes of authorized facilities, radioactive material, and other property in a separate, future rulemaking.

E. Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste (§ 73.51)

In paragraph (b)(4), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees. This conforming change is identical to the conforming changes proposed to §§ 73.46 and 73.55 for Cat. I SSNM and power reactor facilities, respectively, in the February 2011 proposed rule (see Sections V.F and V.G at pp 6221 and 6222 of that **Federal Register** notice).

V. Guidance

The NRC prepared a new draft regulatory guide (DG), DG–5020, ''Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR part 73'' (ADAMS Accession No. ML100321956), which contains detailed guidance on the implementation of the proposed requirements for applying for enhanced weapons and conducting firearms background checks. The DG was made available for public comment on February 3, 2011 (76 FR 6086). Public comments and supporting materials related to DG–5020 can be found on *http://www.regulations.gov* by searching on Docket ID NRC–2011–0015.

However, DG–5020 did not include at-reactor ISFSIs under the applicability section; rather, the DG reserved a section for additional facilities to be added by future rulemakings or Commission orders. The addition of at-reactor ISFSIs facilities to the DG as an eligible class of licensees to receive preemption authority would not appreciably change the guidance contained in the DG. A licensee with an at-reactor ISFSI would have to take the same steps to request this authority as the facilities currently listed in the DG (*i.e.,* power reactor and Cat. I SSNM facilities).

The NRC will issue a final regulatory guide coincident with the publication of a final rule that will include at-reactor ISFSIs in the applicability section of DG–5020 so that it conforms to the requirements of the supplemental proposed rule. Since those conforming changes to the DG do not constitute a significant change to the guidance, the NRC has determined that further public

and stakeholder opportunity to comment on DG–5020 is not necessary for this supplemental proposed rule notice.

VI. Criminal Penalties

For the purposes of Section 223 of the AEA, as amended, the Commission is proposing to amend 10 CFR part 73 under Sections 161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in 10 CFR part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

VII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the FR (62 FR 46517; September 3, 1997), this supplemental proposed rule is classified as compatibility Category ''NRC'' and new §§ 73.18 and 73.19 are designated as Category ''NRC'' regulations. Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods as indicated.

Document	PDR	Web	NRC Library (ADAMS)
Firearms Guidelines	X	X	ML082560848
Environmental Assessment (October 2006 proposed rule)	X	X	ML061920093
Regulatory Analysis Regulatory Analysis-appendices (October 2006 proposed rule)	X	X	ML061380803 ML061380796 ML061440013
Information Collection Analysis	X	X	ML092640277
NRC Form 754	X	X	ML092650459
Commission: SECY–08–0050 (April 17, 2008)	X	X	ML072920478
Commission: SECY–08–0050A (July 8, 2008)	X	X	ML081910207
Commission: SRM–SECY–08–0050/0050A (August 15, 2008)	X	X	ML082280364
Letter Opinion from Bureau of Alcohol, Tobacco, Firearms, and Explosives' Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009).	X	X	ML090080191
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rule (February 3, 2011).	X	X	ML103410132
DG–5020 ''Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73'' (February 3, 2011).	X	X	ML100321956
Letter of Christopher E. Earls, on Behalf of Nuclear Energy Institute, on the proposed ''Enhanced Weapons, Firearms Background Checks and Security Event Notifications'' rule, Request for 90-Day Extension to Comment Period (February 15, 2011).	X	.....	ML110480470
Diablo Canyon, Units 1 and 2, Independent Spent Fuel Storage Installation, Application for Stand-Alone Preemption Authority Under 42 U.S.C. 2201a (December 22, 2011).	X	.....	ML113610556
Commission: SECY–12–0027 (February 17, 2012)	X	X	ML113130015
Commission: SRM–SECY–12–0027 (May 3, 2012)	X	X	ML12124A377
NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' Revision 4 (September 30, 2004).	X	X	ML042820192

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the supplemental proposed rule with respect to the clarity and effectiveness of the language used.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this supplemental proposed rule, the NRC proposes to use standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by (1) Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense; (2) State law-enforcement training centers; or (3) State Division (or Department) of Criminal Justice Services (DCJS) Training Academies. The NRC invites comment on the use of consensus standards.

XI. Finding of No Significant Environmental Impact

In the proposed rule published on February 3, 2011, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment for this

supplemental proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section VIII, ''Availability of Documents,'' of this document. Due to the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this supplemental proposed rule, the assumptions in the February 2011 proposed rule have not changed. Accordingly, the Commission is not seeking additional comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

The proposed rule published on February 3, 2011 (76 FR 6200), would impose new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501, *et seq.*). These new or amended information collection requirements were submitted to the Office of Management and Budget (OMB) for review under clearance numbers 3150–0002 and 3150–0204. The existing requirements for part 73 were previously approved by OMB, approval number 3150–0002.

This supplemental proposed rule does not contain new or amended information collection requirements not already identified in the February 3, 2011, proposed rule. However, it would apply these requirements to the at-reactor ISFSI class of designated facilities. The estimated number of respondents and licensee burden remain unchanged from the February 2011 proposed rule. The inclusion of at-reactor ISFSI facilities will be reflected in the revised OMB clearance package prepared for the final rule.

The NRC is seeking public comment on the potential impact of the information collections contained in this supplemental proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package for the proposed rule may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. The OMB clearance package and supplemental proposed rule are available at the NRC's Web site, *http://www.nrc.gov/public-involve/doc-comment/omb/* for 30 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by February 11, 2013 to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 205550001, or by email to *INFOCOLLECTS.Resource@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0002 and 3150–0204), Office of Management and Budget, Washington, DC 20503. You may also email comments to *Chad_S_Whiteman@omb.eop.gov* or comment by telephone at 202–395–4718.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis

The NRC prepared a draft regulatory analysis for the proposed rule published on February 3, 2011, (see Section VIII, ''Availability of Documents,'' of this document). The analysis examined the costs and benefits of the Implementation of Section 161A of the AEA. The regulatory analysis has been updated to reflect the addition of at-reactor ISFSI facilities.

The NRC is taking action to conform implementing regulations to the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. The requirements identified by this supplemental proposed rule were also identified in the February 2011 proposed rule. In this regulatory analysis, the NRC is providing a summary of the cost and benefit estimates from the February 2011 proposed rule and noting the changes necessitated by this supplemental proposed rule. The NRC considers the costs and benefits associated with applying for enhanced weapons to be unchanged from those described by the draft regulatory analysis in the February 2011 proposed rule, as the plans and analysis required to accompany an application have not changed. However, additional requirements have been added because of the addition of at-reactor ISFSI facilities. These proposed regulations have been developed to be consistent with the issued Firearms Guidelines. This regulatory analysis was developed following the guidance contained in NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' Revision 4, issued September 2004 (ADAMS Accession No. ML042820192).

1. Statement of the Problem and Objective

The NRC is proposing regulations that would implement its authority under Section 161A of the AEA and revise existing regulations governing security event notifications. On September 11, 2009, with the approval of the U.S. Attorney General, the NRC published the Firearms Guidelines (74 FR 46800); these guidelines relate to the NRC's implementation of the new statutory authority.

The NRC proposed new regulations on February 3, 2011 (76 FR 6200), that would implement the new statutory authority. The NRC is now proposing further revisions that will address the voluntary application for enhanced weapons and the mandatory firearms background checks under Section 161A to include as a class of designated facilities called at-reactor ISFSIs.

2. Identification and Analysis of Alternative Approaches to the Problem

Because this rulemaking is in response to the statutorily mandated provisions of Section 161A of the AEA and the direction provided by the Firearms Guidelines issued by the Commission, there are no acceptable alternatives to the proposed rulemaking. Application for enhanced weapons authority and preemption authority under Section 161A is voluntary; however, licensee and certificate holder compliance with the firearms background checks under Section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of this rulemaking.

3. Estimation and Evaluation of Values and Impacts

In general the parties that would be affected by this supplemental proposed rule are the licensees and certificate holders (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees and certificate holders, the FBI, and the

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

• *Safeguards and Security Considerations*—The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will comply with statutory requirements and provide high assurance that public health and safety and the common defense and security will be enhanced because of licensees' and certificate holders' increased ability to repulse an attack.

• *Industry Implementation*—The supplemental proposed rule would require licensees and certificate holders with at-reactor ISFSI facilities to subject their security personnel to a fingerprint-based background check and a firearms background check against the NICS. Also, the rule would give licensees and certificate holders in Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority or standalone preemption authority. If a licensee or certificate holder is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on the request. If the NRC approves the request, a licensee or certificate holder would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would need to develop procedures to comply with these requirements.

For purposes of this analysis, the NRC staff assumed that all licensees and certificate holders who fall within the proposed designated classes of facilities would take advantage of making use of enhanced weapons protection (*i.e.,* 65 operating power reactor sites (which includes 53 at-reactor ISFSI facilities), 15 decommissioning power reactor sites, and 2 Cat. I SSNM facilities for a total of 82 facilities). The staff assumed that the licensee's or certificate holder's security personnel required to protect the operating power reactor site would also protect any at-reactor ISFSI facility without any increase in onsite staff. Since the total number of facilities is the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry implementation cost and assumptions have not changed and are summarized in Table 1.

TABLE 1

Enhanced Weapons Costs	
Enhanced weapons cost per site	$50,000
½ staff year to change security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval per site	80,000
¼ staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons per site	40,000
Total individual site's implementation cost for the voluntary enhanced weapons regulations	170,000
Total enhanced weapons implementation cost for the industry [1]	13,940,000
Firearms Background Checks Costs	
⅙ staff year to establish a program for the mandatory firearms background checks per site	26,700
Total program cost for mandatory firearms background checks to industry [1]	2,190,000
NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each operating reactor and Cat. I SSNM facility	11,400
NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each decommissioned reactor site	5,700
Total industry cost for performing the first-time background checks	849,000
Total industry implementation costs	16,979,000

[1] Please note that throughout this analysis sums may not equal shown total values because of rounding. Also, this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. Chapter 53), since those costs fall under ATF's sole regulatory purview.

• *Industry Operation*—Enhanced weapon inventories' requirements of the February 2011 proposed rule, both monthly and semi-annually, would result in operating expenses for industry. Since the total number of facilities, including sites with at-reactor ISFSIs, are the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry inventory cost and assumptions have not changed and are summarized in Table 2.

TABLE 2

Annual Enhanced Weapons Costs	
Monthly and semi-annual automatic weapon inventories cost per site	$5,600
Total enhanced weapons implementation cost for the industry	460,000
Total enhanced weapons implementation cost for the industry with a 7 percent discount rate over remaining lifetime	6,100,000
Total enhanced weapons implementation cost for the industry with a 3 percent discount rate over remaining lifetime	11,200,000
Annual Firearms Background Checks Costs	
Annual mandatory firearms background checks per site	3,800
Total program cost for mandatory firearms background checks to industry with a 7 percent discount rate over remaining lifetime	3,401,000
Total program cost for mandatory firearms background checks to industry with a 3 percent discount rate over remaining lifetime	6,468,000

With respect to the security event notification reporting requirements, cyber and physical intrusions, suspicious activity reports, unauthorized operation or tampering events, reporting enhanced weapons being lost or stolen or adverse ATF findings, and the impact of events requiring entry in the safeguards event log the addition of at-reactor facilities will not have an impact on this analysis.

The total industry operating costs are the sum of the recurring inventory requirements ($6.1 million given the 7 percent real discount rate and $11.2 million with the 3 percent rate), the background checks ($3.7 million at 7 percent and $6.5 million at 3 percent), and the security event notification reports ($15.1 million using the 7 percent rate and $28.6 million with the 3 percent rate). This total is estimated to range from $24.9 million (7 percent) to $46.3 million (3 percent rate) which is unchanged from the February 2011 proposed rule.

• *NRC Implementation*—The NRC's implementation costs include the labor cost for the development of the final rule and the supporting regulatory guidance (two regulatory guides and the weapons safety assessment). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule. As with the cost associated with the industry implementation, the addition of the at-reactor facilities will not increase the labor cost to the NRC beyond what was outlined in the February 2011 proposed rule. The NRC's implementation costs are summarized in Table 3.

TABLE 3

NRC Implementation Costs	
Develop final rule, final regulatory guidance, and inspection procedures	$280,000
NRC review of each licensee's and certificate holder's security plan, training and qualification plan, contingency response plan, weapons safety assessment, and one round of Requests for Additional Information questions	3,280,000
Total NRC Implementation Costs	3,600,000

• *NRC Operation*—The NRC would need to inspect the licensees' and certificate holders' periodic inventories, recordkeeping, and training and qualification of enhanced weapons as a result of this rule. The addition of the at-reactor facilities will not increase the operational cost to the NRC beyond what was assumed in the February 2011 proposed rule. The NRC's operational costs are summarized in Table 4.

TABLE 4

NRC Inventory Inspection Costs	
1st year of NRC inspections of licensee's and certificate holder's automatic weapon inventories	$131,200
Annual NRC inspections of licensee's and certificate holder's automatic weapon inventories after 1st year	65,600
Total NRC costs for inspections of licensee's and certificate holder's automatic weapon inventories of the industry with a 7 percent discount rate over remaining lifetime	934,000
Total NRC costs for inspections of licensee's and certificate holder's automatic weapon inventories of the industry with a 3 percent discount rate over remaining lifetime	1,665,000
NRC Records Inspection Costs	
1st year of NRC record inspections of licensee's and certificate holder's background checks	131,200
Annual NRC record inspections of licensee's and certificate holder's background checks after 1st year	65,600

TABLE 4—Continued

Total NRC costs for record inspections of licensee's and certificate holder's background checks of the industry with a 7 percent discount rate over remaining lifetime	934,000
Total NRC costs for record inspections of licensee's and certificate holder's background checks of the industry with a 3 percent discount rate over remaining lifetime	1,665,000
NRC's total operating costs with a 7 percent discount rate	1,900,000
NRC's total operating costs with a 3 percent discount rate	3,300,000

• *Regulatory Efficiency*—The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC's ability to monitor ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.

• *Public Health (Accident)*—The proposed action could reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Occupational Health (Accident)*—The proposed action could reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Off-Site Property*—The proposed action could reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *On-Site Property*—The proposed action could reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Other Government Agencies*—The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer enhanced weapons to and from an authorized NRC licensee or certificate holder. Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee previously discussed. The FBI does not charge a fee for processing firearms background checks. Also, as previously noted in the February 2011 proposed rule, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

4. Presentation of Results

Section 161A of the AEA requires several modifications to 10 CFR part 73. The pertinent sections and appendices which are being revised in this supplemental proposed rule are §§ 73.2, ''Definitions,'' 73.18, ''Authorization for use of enhanced weapons and preemption of firearms laws,'' 73.19, ''Firearms background checks for armed security personnel,'' and 73.51, ''Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.''

The fundamental incentive for a licensee or certificate holder to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts at radiological sabotage. A licensee's or certificate holder's decision to apply for enhanced weapons authority is voluntary. They must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general; and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. The firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees and certificate holders would be required to pay an excise tax when transferring enhanced weapons, the tax is not considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry enhanced weapons implementation costs is $13,940,000. The total enhanced weapons mandatory background checks program costs to the industry is $2,190,000, and the total first-time background checks for the industry is $849,000. The sum of the total industry implementation cost is $17.0 million. The industry operating costs for this supplemental proposed rule when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from $9.5 million to $17.7 million, given the 7 percent and 3 percent real discount rates, respectively.

The total costs to industry, including both implementation and operating expenses for this supplemental proposed rule are estimated to range from $26.5 million to $34.7 million, again given the 7 percent and 3 percent real discount rates, respectively.

The NRC's implementation costs are almost $3.6 million. The recurring or annual costs are calculated to have a present value of $1.9 million (7 percent rate) to $3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about $5.5 million (7 percent rate) to $6.9 million (3 percent rate).

The total quantitative costs estimates for this supplemental proposed rulemaking are estimated to be from $32.0 million (7 percent) to $41.6 million (3 percent).

• *Disaggregation*

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with Section 161A of the AEA, the NRC

believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as previously discussed.

5. Decision Rationale

Relative to the ''no-action'' alternative, the supplemental proposed rule would cost the industry from around $26.5 million to $34.7 million over the average lifetime of the plants. The total NRC costs would range from $5.5 million to slightly under $7 million. Total costs of the supplemental proposed rule are estimated to range from around $32 million to $42 million. The requirements in this supplemental proposed rule are the result of the new Section 161A of the AEA. The NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the supplemental proposed rule would provide increased defensive capability of licensees and certificate holders and thus would increase the assurance that a licensee can adequately protect an at-reactor ISFSI facility against an external assault. Second, the supplemental proposed rule would provide a mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as previously indicated, application for enhanced weapons authority and preemption authority under Section 161A is voluntary.

Based on the NRC's assessment of the costs and benefits of the supplemental proposed rule on licensee and certificate holder facilities, the agency has concluded that the supplemental proposed rule provisions would be justified.

6. Implementation

The final rule is to take effect 60 days after publication in the FR. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this rule to have any impact on other requirements.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. With respect to the enhanced weapons and firearms background check provisions, this supplemental proposed rule affects only the licensing and operation of nuclear power reactors, at-reactor ISFSIs, and fuel cycle facilities authorized to possess and use Category I quantities of SSNM. The companies that own or operate these facilities or conduct these activities do not fall within the scope of the definition of ''small entities'' presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XV. Backfitting and Issue Finality

The NRC evaluated the aggregated set of requirements in this supplemental proposed rule that constitute backfitting in accordance with 10 CFR 50.109, 70.76, 72.62, and the finality provisions in 10 CFR part 52. The NRC's evaluation of changes in accordance with 10 CFR 10.109, 70.76, and the finality provisions in 10 CFR part 52 is described in the draft regulatory analysis on the proposed rule published on February 3, 2011. The Availability information for the draft regulatory (and backfit) analysis is provided in Section VIII, ''Availability of Documents,'' of this document. This analysis examined the costs and benefits of the alternatives considered by the NRC. The regulations in 10 CFR 72.62 pertain to changes in requirements for ISFSI facilities, which is the subject of the supplemental proposed rule. However, the supplemental proposed rule will not change the requirements from the proposed rule; it simply applies the proposed requirements to an additional class of facilities. Therefore the evaluation of changes presented in the proposed rule from February 2011 also applies to this supplemental proposed rule and the evaluation is in accordance with 10 CFR 72.62.

The provisions of this supplemental proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule implementing Section 161A of the AEA, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the Commission believes that such measures are essential for the effective implementation of the rule's requirements, and thus necessary for the adequate protection to the health and safety of the public and are in accord with the common defense and security.

Therefore, for the reasons previously stated, a backfit analysis is not required and has not been completed for any of the provisions of this supplemental proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to amend 10 CFR part 73 and proposes to further amend 10 CFR part 73, as proposed to be amended at 76 FR 6200, February 3, 2011, as follows:

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act sections 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sections 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act section 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act sections 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 2. In § 73.2, paragraph (a), a definition for ''At-reactor independent spent fuel storage installation'' is added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *

(a) * * *

At-reactor independent spent fuel storage installation or *at-reactor ISFSI* means an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under parts 50 or 52 of this chapter.

* * * * *

■ 3. In § 73.18, paragraph (c), as proposed to be added at 76 FR 6233, February 3, 2011, is revised to read as follows:

§ 73.18 Authorization for use of enhanced weapons and preemption of firearms laws.

* * * * *

(c) *Applicability.* (1) Stand-alone preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission pursuant to 42 U.S.C. 2201a—

(i) Power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.3 feet [ft]), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a—

(i) Power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.3 ft), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

* * * * *

■ 4. In § 73.19, paragraph (c), as proposed to be added at 76 FR 6237, February 3, 2011, is revised to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

* * * * *

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property are designated by the Commission at 42 U.S.C. 2201a—

(1) Power reactor facilities;

(2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (100 Rad) per hour at a distance of 1 meter (3.3 feet), without regard to any intervening shielding; and

(3) At-reactor independent spent fuel storage installations.

* * * * *

■ 5. In § 73.51, paragraph (b)(4) is added to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(b) * * *

(4)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after [effective date of final rule], the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 180 days of the issuance of the license, or within 180 days of the implementation of a protective strategy that uses covered weapons, whichever is later.

(iii) The provisions of this paragraph are only applicable to licensees subject to this section who store spent nuclear fuel in an at-reactor ISFSI.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of December, 2012.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2013–00237 Filed 1–9–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1305; Directorate Identifier 2010–SW–041–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, BO–105LS A–3, EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, EC135 T2+, MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, MBB–BK 117 C–1, and MBB–BK 117 C–2 helicopters with certain part-numbered cantilever assemblies, cyclic stick locking devices, or cyclic stick holder assemblies installed. This proposed AD would require modifying and identifying the cyclic stick cantilever or lock. This proposed AD is prompted by pilots inadvertently taking off with the cyclic locked. The proposed actions are intended to prevent a pilot taking off with the cyclic in the locked position, which could result in loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by March 11, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Manager, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *jim.grigg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No. 2008–0113, dated June 10, 2008, for the Model EC135, EC635 and MBB–BK 117 C–2 helicopters. EASA advises of several cases where takeoff was executed with a locked cyclic stick on EC135 series helicopters, which may lead to loss of control of the helicopter. EASA also advises that the stick-locking device installed on Model BO 105 and MBB–BK 117C–2 helicopters has a similar function as the device installed on the EC135 series helicopters. Therefore, EASA issued AD No. 2009–0079, dated April 1, 2009, to require modification of the cyclic-stick locking/centering device for the Model BO 105 and MBB–BK 117 helicopters.

After EASA AD No. 2009–0079 was issued, type design ownership for the Model BO–105 LS A3 was transferred from Canada to Germany. Because Transport Canada had not issued an AD prior to the transfer, EASA superseded AD No. 2009–0079 with AD No. 2010–0049, dated March 19, 2010, to include Model BO–105 LS A3 in its applicability. The EASA ADs also require amending the applicable Rotorcraft Flight Manual (RFM).

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued the following alert service bulletins (ASB) for each of its model helicopters:

- ASB BO105–40–106, dated December 19, 2008, for all Model BO105 helicopters, except Model BO105 CB–3.
- ASB–BO 105 LS 40–10, dated May 8, 2009, for all Model BO 105 LS A–3 helicopters.
- ASB EC135–67A–015, dated April 14, 2008, for certain serial-numbered Model EC135 and EC635 helicopters.
- ASB–MBB–BK117–40–113, dated December 22, 2008, for all Model MBB–BK117 Models A–1, A–3, A–4, B–1, B–2, C–1.
- ASB MBB BK117 C–2–67A–008, dated April 14, 2008, for certain serial-numbered Model MBB BK117 C–2 helicopters.

These ASBs specify procedures to modify the cantilever assembly or the cyclic stick locking device, which allows neutral positioning and centering of the cyclic stick without the locking feature.

Proposed AD Requirements

This proposed AD would require compliance with the manufacturer's service bulletins for each applicable helicopter with a certain part-numbered cantilever assembly or a cyclic stick locking device installed as follows:

- ASB BO105–40–106, dated December 19, 2008, for Model BO–105A, BO–10C, BO–105S, and BO–105LS A–1 helicopters.
- ASB–BO 105 LS 40–10, dated May 8, 2009, for Model BO 105 LS A–3 ASB EC135–67A–015, dated April 14, 2008, for Model EC135 P1, P2, P2+, T2, and T2+, serial number (S/N) 0005 up to and including S/N 0699, excluding S/Ns 0076, 0093, 0098, 0099, 0102, 0104, 0106, 0108, 0110, 0111, 0113, 0114, 0116, 0117, and 0119.
- ASB–MBB–BK117–40–113, dated December 22, 2008, for Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters.
- ASB MBB BK117 C–2–67A–008, dated April 14, 2008, for all Model MBB BK117 C–2, S/N 9004 through S/N 9230 helicopters.

Differences Between This Proposed AD and the EASA AD

This proposed AD does not apply to Model BO–105D, BO–105DB, BO–105DB–4, BO–105DBS–4, BO–105DBS–5, BO–105DS, or the military Model EC635 helicopters because these models are not type certificated in the United States. The EASA AD requires amending the RFM, and the proposed AD does not because the RFM revisions have been incorporated by the type certificate holder.

Costs of Compliance

We estimate that this proposed AD would affect 416 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this proposed AD. It would take about .5 work hour to modify the cyclic stick lock at $85 per work hour with no cost for parts. This results in a total estimated cost of $43 per helicopter and $17,680 for the fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Eurocopter Deutschland GmbH: Docket No. FAA–2012–1305; Directorate Identifier 2010–SW–041–AD.

(a) Applicability

This AD applies to the following Eurocopter Deutschland GmbH (Eurocopter) model helicopters, with a listed cantilever assembly, cyclic stick locking device, or cyclic stick holder assembly part number (P/N) installed, certificated in any category:

(1) Model BO–105A, BO–105C, BO–105S, and BO–105LS A–1 helicopters with a cantilever assembly, P/N 105–40132 or 105–40139, installed.

(2) Model BO 105 LS A–3 helicopters with a cantilever assembly, P/N 105–40139, installed.

(3) Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, and EC135 T2+ helicopters, serial number (S/N) 0005 up to and including S/N 0699 except S/Ns 0076, 0093, 0098, 0099, 0102, 0104, 0106, 0108, 0110, 0111, 0113, 0114, 0116, 0117, and 0119, with a cyclic stick locking device, P/N L670M1045101, L670M1045102, L670M1045104, L670M1045105, L670M1045106, or L670M1045107, and Pin, P/N L311M1038205 or L311M1099205, installed.

(4) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, and MBB–BK117 C–1 helicopters, with a cyclic stick holder assembly, P/N 117–41140–01, 117–41230–01, or 117–41230–03, installed.

(5) Model MBB–BK117 C–2 helicopters, S/N 9004 up to and including S/N 9230, with a cyclic stick locking device, P/N B856M1011101, and Pin, P/N L311M1038205 or L311M1099205, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as inadvertent locking of the cyclic prior to take off, which could result in loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

Within 100 hours time-in-service:

(1) For Model BO–105A, BO–105C, BO–105S, and BO–105LS A–1 helicopters, modify and identify the cyclic stick locking device by following the Accomplishment Instructions, paragraphs 2.B.1. through 2.B.2.4 and 2.B.3. through 2.B.3.3., of Eurocopter Alert Service Bulletin (ASB) No. BO105–40–106, dated December 19, 2008.

(2) For Model BO–105 LS A–3 helicopters, modify and identify the cyclic stick locking device by following the Accomplishment Instructions, paragraphs 2.B.1.through 2.B.1.3, of Eurocopter ASB No. ASB–BO 105 LS 40–10, dated May 8, 2009.

(3) For Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, and EC135 T2+, helicopters, modify and identify the cyclic stick cantilever by following the Accomplishment Instructions, paragraphs 3.B. through 3.C., of Eurocopter ASB EC135–67A–015, dated April 14, 2008.

(4) For Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters, modify and identify the cyclic stick locking device by following the Accomplishment Instructions, paragraphs 2.B.1. through 2.B.2.2., of Eurocopter ASB No. ASB–MBB–BK117–40–113, dated December 22, 2008.

(5) For Model MBB–BK117 C–2 helicopters, modify and identify the cyclic stick cantilever by following the Accomplishment Instructions, paragraphs 3.B. through 3.C., of Eurocopter ASB MBB BK117 C–2–67A–008, dated April 14, 2008.

(e) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Jim Grigg, Manager, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *jim.grigg@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2010–0049, dated March 19, 2010, which superseded EASA AD No. 2009–0079, dated April 1, 2009; and EASA AD No. 2008–0113, dated June 10, 2008.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6710 Main Rotor Control.

Issued in Fort Worth, Texas, on January 2, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–00311 Filed 1–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–1073]

RIN 1625–AA08

Special Local Regulation; 2013 Lauderdale Air Show, Atlantic Ocean; Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to establish special local regulations on

the Atlantic Ocean and the entrance of Port Everglades in the vicinity of Fort Lauderdale, Florida during the 2013 Lauderdale Air Show. The event is scheduled to take place from Thursday April 18, 2013 through Sunday, April 21, 2013. The regulation is necessary for the safety of the participants, spectators, and the general public during the event. The special local regulations will establish the following two areas: an exclusion area, where all persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within; a limited access area, where all vessels over 500 gross tons will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before February 11, 2013.

Requests for public meetings must be received by the Coast Guard on or before February 11, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2012–1073 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–1073 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before February 11, 2013, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Regulatory History and Information

Previously, temporary special local regulations regarding this maritime event have been published in the Code of Federal Regulations at 33 CFR 100.701. No final rule has been published in regards to this event. The proposed special local regulations are not new in their entirety, but merely reflect updates to certain details of the event.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the Lauderdale Air Show.

D. Discussion of Proposed Rule

From Thursday, April 18, 2013 through Sunday, April 21, 2013, Lauderdale Air Show, LLC. will be hosting the 2013 Lauderdale Air Show. The Lauderdale Air Show will include numerous aircraft engaging in aerobatic maneuvers over the Atlantic Ocean. It is expected that approximately 500 spectator vessels will be present in the area during the event. The high speed at which participant aircraft will be traveling and the maneuvers they will be performing pose a safety hazard to air show participants, participant aircraft, spectators, and the general public.

The Coast Guard is establishing two regulated areas for the 2013 Lauderdale Air Show. The two regulated areas are listed below.

1. *Atlantic Ocean, Fort Lauderdale, Florida.* Certain navigable waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida. This exclusion area will be enforced daily from 10:00 a.m. until 5:00 p.m. from April 18, 2013 through April 21, 2013. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

2. *Port Everglades, Fort Lauderdale, Florida.* Certain navigable waters of the Atlantic Ocean in the vicinity of Port Everglades in Fort Lauderdale, Florida. This limited access area will be enforced daily from 4:00 p.m. until 5:30 p.m. on April 20, 2013 and April 21, 2013. Vessels over 500 gross tons are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulations will be enforced for a maximum of 7 and a half hours each day for only four days; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the exclusion area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) vessels 500 gross tons or more may enter, transit through, anchor in, or remain within the limited access area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (4) vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the regulated areas during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). Due to potential environmental issues, we conducted an environmental assessment last year for both the issuance of the marine event permit and the establishment of this special local regulation. The same environmental assessment is being used for this year's event as it is substantially similar in all aspects and therefore the potential effects and alternatives would remain unchanged. After completing the environmental assessment for the issuance of the marine event permit and the establishment of these special local regulations, we have determined these actions will not significantly affect the human environment. The environmental assessment and finding of no significant impact (FONSI) are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–1073 to read as follows:

§ 100.35T07–1073 Special Local Regulations; 2013 Lauderdale Air Show, Atlantic Ocean, Fort Lauderdale, FL.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) Exclusion area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within an imaginary line connecting the following points: starting at Point 1 in position 26°10′39″ N, 80°05′47″ W; thence southeast to Point 2 in position 26°10′32″ N, 80°04′39″ W; thence southwest to Point 3 in position 26°06′33″ N, 80°05′08″ W; thence northwest to Point 4 in position 26°06′40″ N, 80°06′15″ W; thence northeast back to origin. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the exclusion area.

(2) Limited access area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within an imaginary line connecting the following points: starting at Point 1 in position 26°05′41″ N, 80°06′59″ W; thence southeast to Point 2 in position 26°05′26″ N, 80°06′51″ W; thence northeast to Point 3 in position 26°05′32″ N, 80°05′24″ W; thence north to Point 4 in position 26°05′42″ N, 80°05′24″ W; thence southwest back to origin. All vessels 500 gross tons or greater are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels, are prohibited from:

(A) Entering, transiting through, anchoring in, or remaining within the exclusion area, unless participating in the event.

(B) Transiting through, anchoring in, or remaining within the limited access area, unless less than 500 gross tons.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* The exclusion area will be enforced daily from 10:00 a.m. until 5:00 p.m. from April 18, 2013 through April 21, 2013. The limited access area will be enforced daily from 4:00 p.m. until 5:30 p.m. on April 20, 2013 and April 21, 2013.

Dated: December 26, 2012.

J.B. Pruett,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2013–00275 Filed 1–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 327 and 352

RIN 0991–AB87

Health and Human Services Acquisition Regulation

AGENCY: Department of Health and Human Services; Office of the Assistant Secretary for Financial Resources and Office of Grants and Acquisition Policy and Accountability, Division of Acquisition.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (HHS) is proposing to amend its Federal Acquisition Regulation (FAR) Supplement—the HHS Acquisition Regulation (HHSAR)—to add two clauses, ''Patent Rights—Exceptional Circumstances'' and ''Rights in Data—Exceptional Circumstances,'' and their prescriptions.

DATES: Comments are due on or before March 11, 2013.

ADDRESSES: Submit comments in response to ''Health and Human Services Acquisition Regulation, Clauses 352.227–11 and 352.227–14'' by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''Health and Human Services Acquisition Regulation, Clauses 352.227–11 and 352.227–14'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Health and Human Services Acquisition Regulation, Clauses 352.227–11 and 352.227–14.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Health and Human Services Acquisition Regulation, Clauses 352.227–11 and 352.227–14'' on your attached document.
- *Fax:* 202–690–6902.
- *Mail:* HHS/ASFR/OGAPA/Division of Acquisition, ATTN: Cheryl Howe, Room 537H, HHH Building, 200 Independence Avenue SW., Washington, DC 20201.

Instructions: Please submit comments only and cite Health and Human Services Acquisition Regulation, Clauses 352.227–11 and 352.227–14, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, telephone (202) 690–5552.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this proposed rule is to ensure that providers of proprietary material(s) to the government will retain all their preexisting rights to their material(s), and rights to any inventions made under a contract or subcontract (at all tiers), when a Determination of Exceptional Circumstances (DEC) has been executed. ''Material'' means any proprietary material, method, product, composition, compound or device, whether patented or unpatented. A DEC is executed consistent with the policy and objectives of the Bayh-Dole Act, 35 U.S.C. 200, *et seq.,* to ensure that subject inventions made under contracts and subcontracts (at all tiers) are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations including universities; to ensure that the Government obtains sufficient rights in federally supported inventions to meet its needs; to protect the public against nonuse or unreasonable use of inventions; and in the case of fulfilling the mission of the U.S. Department of Health and Human Services, to ultimately to benefit the public health.

Under certain circumstances, in order to ensure that pharmaceutical companies, academia, and others will collaborate with HHS in identifying, testing, developing, and commercializing new drugs, therapeutics, diagnostics, prognostics and prophylactic measures affecting human health, a Determination of Exceptional Circumstances (DEC) must be executed, and Contractor's and subcontractor's rights (at all tiers) in subject inventions should be limited accordingly, consistent with DEC requirements and through appropriate contract clauses.

II. Proposed Rule

The proposed changes would amend the HHSAR by adding two new clauses, 352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances, and their respective prescriptions at 327.303 and 327.409.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under section 6 of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

This change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

A. This action is being implemented to amend the Health and Human Services Acquisition Regulation (HHSAR) by adding two new clauses, 352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances, and their respective prescriptions at 327.303 and 327.409.

B. These changes are proposed to ensure that providers of proprietary materials to the government will retain their preexisting rights to their material(s), and rights to any inventions made under a contract or subcontract (at all tiers), in which the provider has a proprietary interest when a Determination of Exceptional Circumstances (DEC) has been executed.

C. This proposed rule applies to all Federal contractors and subcontractors at all tiers as applicable, regardless of size or business ownership. The resultant cost impact is considered $444,990.42. There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities.

D. A copy of the IRFA shown in V. below has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. HHS invites comments from small entities and other interested parties on the expected impact of this rule on small entities.

E. IRFA

1. Description of the reasons why action is being taken.

This proposed rule will amend the Health and Human Services Acquisition Regulation (HHSAR) to add two new clauses, Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances. These clauses will be used in lieu of FAR clause 52.227–14 Rights in Data—General and FAR clause 52.227–11 Patent Rights—Ownership by the Contractor to address the patent and data rights of the Government, the prime contractor, the subcontractors at all tiers) and the providers of proprietary materials to the Government (providers).

2. Statement of the objectives of, and the legal basis for, the rule.

This action is being taken to ensure that providers, the majority of which are small businesses, will retain their preexisting rights to material and subject inventions in which the provider has a proprietary interest when a Determination of Exceptional Circumstances (DEC) has been executed. A DEC promotes the policy and objectives of the Bayh-Dole Act, 35 U.S.C. 200, *et seq.,* to ensure that subject inventions made under contracts and subcontracts (at all tiers) are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; to ensure that the Government obtains sufficient rights in federally supported inventions to meet its needs; to protect the public against nonuse or unreasonable use of inventions; and ultimately to benefit the public health. In order to ensure that pharmaceutical companies, academia, and others will collaborate with the Department of Health and Human Services (HHS) under certain conditions in identifying, testing, developing, and commercializing new drugs, therapeutics, diagnostics, prognostics and prophylactic measures affecting human health, a determination that exceptional circumstances must be executed, and Contractor's and subcontractor's rights (at all tiers) in subject inventions should be limited accordingly through appropriate contract clauses.

3. Description of and, where feasible, an estimate of the number of small entities to which the rule will apply.

The affected contracts are usually awarded using NAICS code 541711, Research and Development in Biotechnology, or NAICS code 541712 Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). Both NAICS have a small business size standard of 500 employees. It is estimated that this rule will affect 61 prime contractors of which 4 will be small businesses (6.5%); 76 subcontractors of which 21 will be small businesses (27.6%); and 379 providers of which 189 will be small businesses (49.87%). The aforementioned figures are based on historical data from one operating division of HHS. It is anticipated that numbers will increase proportionally as the proposed clauses will be used on an HHS-wide basis. Using the proposed HHSAR clauses better addresses the requirements of the Bayh-Dole Act and provides appropriate legal protection for the proprietary rights of providers to ensure providers will collaborate with the Government and provide access to their promising proprietary material(s) to meet HHS program goals. Comments will be solicited from small businesses and other interested parties. Comments will be considered from small entities on the impact of this rule.

4. Description and estimate of compliance requirements including differences in cost, if any, for different groups of small entities.

The projected reporting, recordkeeping, or other compliance requirements projected for this rule will be carried out by the prime contractor. Only a small percentage (6.5%) of the prime contractors will be small businesses. The projected cost for compliance requirements for those small businesses will be $28,924.38.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules. These clauses will be used in lieu of FAR clause 52.227–14 Rights in Data—General and with FAR clause 52.227–11 Patent Rights—Ownership by the Contractor.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

In the past a significant number of FAR deviations were processed each time a DEC was executed. Using the proposed HHSAR clauses better addresses the requirements of the Bayh-Dole Act and provides solid legal protection for the proprietary rights of providers to ensure providers will collaborate with the Government and provide access to their promising proprietary material(s) to meet HHS program goals. Therefore, it is believed that the approach outlined in the proposed rule is the most practical and provides benefits to the Government, the public health and industry to ensure HHS program goals can be achieved.

F. HHS will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite HHS Acquisition Regulation in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) applies because this proposed rule contains information collection requirements under the proposed clauses HHSAR 352.227–11 Patent Rights—Exceptional Circumstances, and HHSAR 352.227–14 Rights in Data—Exceptional Circumstances. This requirement has been submitted to the Office of Management and Budget for approval. Public reporting burden for this collection of information is estimated to average 11 hours per response under 352.227–11 and 6 hours under 352.227–14, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Although this requirement is new to the HHSAR, collection of this information is not new as it has been collected through use of deviated FAR clauses 52.227–11 Patent Rights—Ownership and 52.227–14 Rights in Data—General in the past.

Data from Fiscal Years 2007 through 2012 contract awards using approved FAR deviations was used to determine the burden. If this proposed reporting requirement had been in place during those Fiscal Years, it would have covered 63 cost-reimbursement contracts above the simplified acquisition threshold. For 352.227–11 Patent Rights—Exceptional Circumstances, we estimate that it will take approximately 9009 hours to prepare and submit the reports. For 352.227–14 Rights in Data—Exceptional Circumstances, we estimate that it will take approximately 2,268 hours to prepare and submit the reports. The annual reporting burden is estimated as follows for each clause:

HHSAR 352.227–11	
Respondents	63

Responses/respondent	13 × 63
Total annual Responses	819
Preparation hours per response	140 hours/13 responses = 11 hours AVG
Total response burden hours	9009
HHSAR 352.227–14	
Respondents	63
Responses/respondent	6 × 63
Total annual Responses	378
Preparation hours per response	33 hours/6 responses = 6 hours AVG
Total response burden hours	2268

Public reporting burdens indicated above for submission of the data required includes the time for gathering the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, and document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days of this notice.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 48 CFR Parts 327 and 352

Government procurement.

For the reasons stated in the preamble, HHS proposes to amend 48 CFR parts 327 and 352 as follows:

PART 327—PATENTS, DATA, AND COPYRIGHTS

■ 1. The authority citation for 48 CFR parts 327 and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

■ 2. Add subpart 327.3 to read as follows:

Subpart 327.3—Patent Rights under Government Contracts

327.303 Solicitation provision and contract clause.

The Contracting Officer shall insert the clause at 352.227–11 Patent Rights—Exceptional Circumstances and any appropriate alternates in lieu of FAR 52.227–14 whenever a Determination of Exceptional Circumstances (DEC) involving the provision of materials has been executed in accordance with Agency policy and procedures calls for its use and 352.227–11 appropriately covers the circumstances. The Contracting Officer should reference the DEC in the solicitation and shall attach a copy of the executed DEC to the contract.

■ 3. Add subpart 327.4 to read as follows:

Subpart 327.4—Rights in Data and Copyrights

327.409 Solicitation provision and contract clause.

The Contracting Officer shall insert the clause at 352.227–14 Rights in Data—Exceptional Circumstances and any appropriate alternates in lieu of FAR 52.227–14 whenever a Determination of Exceptional Circumstances (DEC) executed in accordance with Agency policy and procedures calls for its use. Prior to using this clause a Determination of Exceptional Circumstances (DEC) must be executed in accordance with Agency policy and procedures. The Contracting Officer should reference the DEC in the solicitation and shall attach a copy of the executed DEC to the contract.

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 352.227–11 to read as follows:

352.227–11 Patent rights-exceptional circumstances.

Patent Rights-Exceptional Circumstances (abbreviated month and year of Final Rule publication)

This clause applies to all Contractor and subcontractor (at all tiers) Subject Inventions.

(a) Definitions.

''Agency'' means the Agency of the U.S. Department of Health and Human Services that is entering into this contract.

''Class 1 Subject Invention'' means a Subject Invention described and defined in the DEC that will be assigned to a third party assignee, or assigned as directed by the Agency.

''Class 2 Subject Invention'' means a Subject Invention described and defined in the DEC.

''Class 3 Subject Invention'' means a Subject Invention that does not fall into Class 1 or Class 2 as defined in this clause.

''DEC'' means the Determination of Exceptional Circumstances signed by [insert approving official]____ on ____ [insert date]____ and titled ''[insert description]''

''Invention'' means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et. seq.*)

''Made'' means: When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of such invention; or when used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

''Material'' means any proprietary material, method, product, composition, compound or device, whether patented or unpatented, which is provided to the Contractor under this contract.

''Nonprofit organization'' means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state Nonprofit organization statute.

''Practical application'' means to manufacture, in the case of a composition or product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

''Small business firm'' means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

''Subject Invention'' means any invention of the Contractor made in the performance of work under this contract.

''Third party assignee'' means any entity or organization that may, as described in the DEC, be assigned Class 1 inventions.

(b) *Allocation of principal rights.* (1) *Retention of pre-existing rights.* Third party assignees shall retain all preexisting rights to Material in which the Third party assignee has a proprietary interest.

(2) *Allocation of Subject Invention rights.* (i) *Disposition of Class 1 Subject Inventions.* (A) *Assignment to the Third party assignee or as directed by the Agency.* The Contractor shall assign to the Third party assignee designated by the Agency the entire right, title, and interest throughout the world to each Subject Invention, or otherwise dispose of or transfer those rights as directed by the Agency, except to the extent that rights are retained by the Contractor under paragraph (b)(3) of this clause. Any such assignment or other disposition or transfer of rights will be subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the United States government to practice or have practiced the Subject Invention for or on behalf of the United States throughout the world. Any assignment shall additionally be subject to the ''March-in rights'' of 35 U.S.C. 203 space. If the Contractor is a U.S. nonprofit educational institution. If the Contractor is a U.S. nonprofit educational, institution it may retain a royalty free, nonexclusive, nontransferable license solely to practice the invention for noncommercial internal research.

(B) [Reserved]

(ii) *Disposition of Class 2 and 3 Subject Inventions.* Class 2 Subject Inventions shall be governed by FAR Clause 52.227–11, Patent Rights-Ownership (December 2007) (incorporated herein by reference). However, the Contractor shall grant a license in the Class 2 Subject Inventions to the Third party assignee or other party designated by the Agency as set forth in Alternate I.

(iii) Class 3 Subject Inventions shall be governed by FAR Clause 52.227–11, Patent Rights-Ownership by the Contractor (December 2007) (previously incorporated herein by reference).

(3) *Greater Rights Determinations.* The Contractor, or an employee-inventor after consultation by the Agency with the Contractor, may request greater rights than are provided in paragraph (b)(1) of this clause in accordance with the procedures of FAR paragraph 27.304–1(c) . In addition to the considerations set forth in section 27.304–1(c), the Agency may consider whether granting the requested greater rights will interfere with rights of the Government or any Third party assignee or otherwise impede the ability of the Government or the Third party assignee to, for example, develop and commercialize new compounds, dosage forms, therapies, preventative measures, technologies or other approaches with potential for the diagnosis, prognosis, prevention and treatment of human diseases. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Agency Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (c)(1) of this clause, or not later than eight (8) months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of the FAR clause at 52.227–13 (incorporated herein by reference), and to any reservations and conditions deemed to be appropriate by the Agency such as the requirement to assign or exclusively license the rights to Subject Inventions to the Third party assignee. A determination by the Agency denying a request by the Contractor for greater rights in a Subject Invention may be appealed within thirty (30) days of the date the Contractor is notified of the determination to an Agency official at a level above the individual who made the determination. If greater rights are granted, the Contractor must file a patent application on the invention. Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any Subject Invention in any country for which the Contractor has retained title. Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Invention disclosure by Contractor.* The Contractor shall disclose in writing each Subject Invention to the Agency Contracting Officer and to the Director, Division of Extramural Inventions and Technology Resources (DEITR), if directed by the Contracting Officer, as provided in paragraph (j) of this clause within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Agency Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was Made and all inventors. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale (offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Agency, the Contractor will promptly notify the Contracting Officer and DEITR of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If the Contractor assigns a Subject Invention to the Third party assignee, the Contractor and its employee inventors shall assist the Third party assignee in securing patent protection.

(d) *Contractor action to protect the Third party assignee's and the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Agency all instruments necessary to: establish or confirm the rights the Government has throughout the world in Subject Inventions pursuant to paragraph (b) of this clause; and convey title to a Third party assignee in accordance with paragraph (b) of this clause and enable the Third party assignee to obtain patent protection throughout the world in that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each Subject Invention Made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights or a Third party assignee's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) If the Contractor is granted greater rights, the Contractor agrees to include, within the specification of any United States non-provisional patent application it files, and any patent issuing thereon, covering a Subject Invention the following statement, ''This invention was made with Government support under (identify the Contract) awarded by (identify the specific Agency). The Government has certain rights in the invention.''

(4) The Contractor agrees to provide a final invention statement and certification prior to the close-out of the contract listing all Subject Inventions or stating that there were none.

(e) *Subcontracts.* (1) The Contractor will include this clause in all subcontracts, regardless of tier, for experimental, developmental, or research work. At all tiers, the clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor will not, as part of the consideration for awarding the contract, obtain rights in the subcontractor's Subject Inventions.

(2) In subcontracts, at any tier, the Agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (c)(1)(ii) of FAR clause 52.227–13 which is incorporated by reference in paragraph (b)(2)(ii) of this clause.

(f) *Reporting on utilization of Subject Inventions in the event greater rights are granted to the Contractor.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees when a request under subparagraph b.3. has been granted by the Agency. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Agency in connection with any march-in proceeding undertaken by the Agency in accordance with paragraph (h) of this clause. As required by 35. U.S.C. 202(c)(5), the Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(g) *Preference for United States industry in the event greater rights are granted to the Contractor.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *March-in rights in the event greater rights are granted to the Contractor.* The Contractor acknowledges that, with respect to any Subject Invention in which it has acquired ownership through the exercise of the rights specified in paragraph (b)(3) of this clause, the Agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of Agency in effect on the date of contract award.

(i) Special provisions for contracts with Nonprofit organizations in the event greater rights are granted to the Contractor. If the Contractor is a Nonprofit organization, it shall:

(1) Not assign rights to a Subject Invention in the United States without the written approval of the Agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a Subject Invention with the inventor, including Federal employee co-inventors (but through their Agency if the Agency deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions for the support of scientific research or education;

(4) Make efforts that are reasonable under the circumstances to attract licensees of Subject Inventions that are small business concerns, and give a preference to a small business concern when licensing a Subject Invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to Practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor; and

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) *Communications.* All invention disclosures and requests for greater rights shall be sent to the Agency Contracting Officer, as directed by the Contracting Officer. Additionally, a copy of all disclosures, confirmatory licenses to the Government, face page of the patent applications, waivers and other routine communications under this funding agreement at all tiers must be sent to:

[INSERT Agency ADDRESS]

Agency Invention Reporting Web site: *http://www.iEdison.gov*

Alternate I

As prescribed in 327.303, the license to Class 2 inventions recited in 352.227–11(b)(2)(a) is as follows:

[insert description of license to Class 2 inventions]

(End of clause)

352.227–14 Rights in data—exceptional circumstances.

As prescribed in 327.409(b)(1), insert the following clause with any appropriate alternates:

Rights in Data—Exceptional Circumstances (abbreviated month and year of Final Rule publication)

(a) *Definitions.* As used in this clause—

[Definitions may be added or modified in paragraph (a) as applicable.]

''Computer database'' or ''database means'' a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

''Computer software''—

(i) Means

(A) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(B) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(ii) Does not include computer databases or computer software documentation.

''Computer software documentation'' means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

''Data'' means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

''Form, fit, and function data'' means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

''Limited rights'' means the rights of the Government in limited rights data as set forth

in the Limited Rights Notice in Alternate II paragraph (g)(3) if included in this clause.

''Limited rights data'' means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

''Restricted computer software'' means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

''Restricted rights,'' as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of Alternate III paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

''Technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

''Unlimited rights'' means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of *17 U.S.C. 401 or 402,* and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (*e.g.,* export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer or in the following paragraphs.

(4) In addition to any other provisions set forth in this contract, the Contractor shall ensure that information concerning possible inventions made under this contract is not prematurely published thereby adversely affecting the ability to obtain patent protection on such inventions. Accordingly, the Contractor will provide the Contracting Officer a copy of any proposed publication or other public disclosure relating to the work performed under this contract at least 30 days in advance of the disclosure. Upon the Contracting Officer's request the Contractor agrees to delay the public disclosure of such data or publication of a specified paper for a reasonable time specified by the Contracting Officer, not to exceed 6 months, to allow for the filing of domestic and international patent applications in accordance with Clause 352.227–11, Patent Rights—Exceptional Circumstances (abbreviated month and year of Final Rule publication).

(5) Data on Material(s). The Contractor agrees that in accordance with paragraph (d)(2), proprietary data on Material(s) provided to the Contractor under or through this contract shall be used only for the purpose for which they were provided, including screening, evaluation or optimization and for no other purpose.

(6) Confidentiality. (i) The Contractor shall take all reasonable precautions to maintain Confidential Information as confidential, but no less than the steps Contractor takes to secure its own confidential information.

(ii) Contractor shall maintain Confidential Information as confidential unless specifically authorized otherwise in writing by the Contracting Officer. Confidential Information includes/does not include: [Government may define confidential information here.]

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (4) of this clause (if those alternate paragraphs are included in this clause), and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may cancel or ignore the markings. However, pursuant to *41 U.S.C. 253d,* the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting

Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final Agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with Agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i) through (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (abbreviated month and year of Final Rule publication). As prescribed in 327.409, substitute the following definition for ''limited rights data'' in paragraph (a) of the basic clause:

''Limited rights data'' means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (abbreviated month and year of Final Rule publication). As prescribed in 327.409, insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following ''Limited Rights Notice'' to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (abbreviated month and year of Final Rule publication)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [*Agencies may list additional purposes or if none, so state.*]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (abbreviated month and year of Final Rule publication). As prescribed in 327.409, insert the following paragraph (g)(4) in the basic clause:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following ''Restricted Rights Notice'' to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (abbreviated month and year of Final Rule publication)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (abbreviated month and year of Final Rule publication)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (abbreviated month and year of Final Rule publication). As prescribed in 327.409, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (abbreviated month and year of Final Rule publication). As prescribed in 327.409, add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

Dated: September 18, 2012.

Angela Billups,

Associate Deputy Assistant Secretary for Acquisition.

[FR Doc. 2012–31490 Filed 1–9–13; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0132]

RIN 2127–AK17

Federal Motor Vehicle Safety Standards; New Pneumatic Tires for Motor Vehicles With a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document proposes several minor amendments to Federal Motor Vehicle Safety Standard (FMVSS) No. 119 to revise the formatting and replace a missing footnote in Table II. FMVSS No. 119 was amended in a final rule published on June 26, 2003 as part of a comprehensive upgrade of several FMVSSs to improve tire safety, as required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The agency believes that this proposed revision is appropriate to correct minor oversights made in the June 2003 final rule for FMVSS No. 119.

DATES: Submit comments on or before March 11, 2013.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following Web site:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

• *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Abigail Morgan, Office of Crash Avoidance Standards (Telephone: 202–366–6005; Fax: 202–493–2990). For legal issues, you may contact David Jasinski, Office of the Chief Counsel (Telephone: 202–366–2992; Fax: 202–366–3820). You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 119, New pneumatic tires for motor vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds) and motorcycles, specifies tire

performance requirements, including a strength test. When FMVSS No. 119 was established in 1973, it adopted the strength test from FMVSS No. 109.[1] The strength test in FMVSS No. 109, originally issued in 1967, was adopted from the Society of Automotive Engineers (SAE) Recommended Practice J918b—*Passenger Car Tire Performance Requirements and Test Procedures* (January 1967).[2, 3] As part of the strength test, a plunger is driven into a tire. The tire must not be punctured before a minimum energy value is reached.

The tire strength test was designed to evaluate the strength of the reinforcing materials in bias ply tires, typically rayon, nylon, or polyester, and it continues to serve a purpose for these tires. Today, bias tires have been almost completely replaced by radial tires in the U.S.; however, a small market for bias tires still remains.

The breaking energy requirements established in the SAE J918b tire strength test were higher for nylon and polyester cord tires than for rayon cord tires in order to ensure that the strength test stringency was comparable for different tire cord materials.[4] As a result, when the FMVSS No. 119 strength test was established, Table II was accompanied by the note: ''For rayon cord tires, applicable energy values are 60 percent of those in the table.'' [5]

In 1998, NHTSA revised FMVSS No. 119 by providing equivalent metric conversions to the standard's English measurements.[6] The following sentence was added as a footnote to the table to explain the metric conversions stating: ''J measurements are rounded down to the nearest whole number.''

In the 1998 notice, some errors were made in the Table II headings. The agency attempted to correct the headings in 2003; however, there were several issues with the reprinted Table II.[7] Many of the minimum static breaking energy values were inadvertently omitted from the table. Additionally, the two footnotes were not printed with the table.

In 2007, the headings and content of Table II were corrected in a **Federal Register** notice, but again the footnotes were not printed with the table.[8]

In 2010, NHTSA issued a Notice of Proposed Rulemaking (NPRM) that proposed an upgrade to FMVSS No. 119.[9] Although the agency proposed several technical corrections to FMVSS No. 119 in the 2010 NPRM, the NPRM did not include any changes to Table II.

II. Proposed Correction to Table II and Formatting Change

In May 2012, Continental Tire of the Americas (Continental) contacted NHTSA to inquire about the tire strength test requirements for rayon cord tires, because they noted the omission of the above-mentioned footnote in Table II, which specified a lower breaking energy requirement for rayon cord tires. After looking into Continental's question, NHTSA has determined that two footnotes for Table II of FMVSS No. 119 were inadvertently removed from the standard. Due to the length of time that has passed since the footnotes were removed in 2003, the agency decided to issue this Supplemental Notice of Proposed Rulemaking (SNPRM) to reinstate one of the footnotes. The other footnote does not need to be reinstated.

This SNPRM proposes to reinstate the missing footnote for Table II related to the breaking energy requirements for rayon cord tires, which reads as follows: ''For rayon cord tires, applicable energy values are 60 percent of those in table.'' This footnote was present in FMVSS No. 119 from when the standard was first issued in 1973 until it was inadvertently omitted in 2003.

The breaking energy requirement for rayon cord tires is less than other materials to make the severity of the test comparable to tires made of other cord materials. The breaking energy requirement for rayon cord tires for light vehicles in FMVSS No. 109 remain less than the requirement for nylon or polyester cord tires. The agency can determine whether a tire is composed of rayon cord from information that is required by S6.5(f) of FMVSS No. 119 to be molded on the tire's sidewall.

The agency is not proposing the replacement of the footnote for Table II related to rounding. When NHTSA added metric conversions to FMVSS No. 119 in 1998, the agency's principle for converting English system measurements to the metric system favored equivalent conversions, not exact ones.[10] The footnote to Table II stating that measurements in joules were rounded down to the nearest whole number merely reflected this principle. The agency no longer believes that a footnote explaining the rounding procedure is necessary in the regulatory text.

The agency is also proposing three non-substantive formatting changes to Table II in this SNPRM. First, some of the headings have been revised to more clearly explain the tire characteristics. Second, the heading row alignment has been modified. Third, the order of the columns in the right portion of the table for tires other than light truck, motorcycle, and 12 rim diameter code or smaller has been modified to group tube type and tubeless tires together. The agency believes that these formatting changes will make Table II easier to read.

III. Technical Corrections

We have discovered an error in the descriptions of the formula for computing the breaking energy of a tire in metric located in S7.3(f) of FMVSS No. 119. In S7.3(f)(1), the breaking energy (W) is reported in joules (J); however, the explanation incorrectly states the unit abbreviation for joules as kJ, which is the abbreviation for kilojoules. In S7.3(f)(2), unit abbreviations are not included in the explanation and the breaking energy equation formatting is inconsistent with S7.3(f)(1). We are proposing to correct these errors.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

[1] See FMVSS No. 119 Proposed Motor Vehicle Safety Standard, 37 FR 13481 (Jul. 8, 1972).

[2] See FMVSS No. 109 Advance Notice of Proposed Rulemaking, 32 FR 2417 (Feb. 3, 1967).

[3] SAE is an organization that develops voluntary standards for aerospace, automotive, and other industries. Many of SAE's recommended practices are developed using technical information supplied by vehicle manufacturers and automotive test laboratories.

[4] See SAE Recommended Practice J918b—Passenger Car Tire Performance Requirements and Test Procedures (January 1967) Section 3.1.

[5] FMVSS No. 119 Final Rule, 38 FR 31302 (Nov. 13, 1973).

[6] See 68 FR 28912 (May 27, 1998).

[7] See 68 FR 38166 (Jun. 26, 2003).

[8] See 72 FR 49207 (Aug. 28, 2007). When Table II, as revised in 2007, was reprinted in the Code of Federal Regulations, the values in the table were printed incorrectly. The table was recently corrected in a **Federal Register** notice published on September 6, 2012. See 77 FR 54836.

[9] 75 FR 60036 (Sept. 29, 2010).

[10] 63 FR 28912.

You may also submit two copies of your comments, including the attachments, by mail to Docket Management at the beginning of this document, under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.**

Will the agency consider late comments?

We will consider all comments that submitted to the docket before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments received after the specified comment closing date. If we receive a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

You may also read the comments at the address and times given near the beginning of this document under **ADDRESSES.**

V. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined not to be significant under the Department's regulatory policies and procedures.

This SNPRM would impose no costs upon tire manufacturers. If adopted, the changes proposed in this SNPRM would correct minor errors to Table II of FMVSS No. 119. These changes would impose no costs on manufacturers, nor do we expect that these changes would result in quantifiable benefits. For information on the costs and benefits of the proposed upgrade to FMVSS No. 119, please see the September 29, 2010 NPRM [11] and the accompanying Preliminary Regulatory Evaluation.[12]

B. Other Rulemaking Analyses and Notices

For information on the Regulatory Flexibility Act, Executive Order 13132 (Federalism), the National Technology Transfer and Advancement Act, the Unfunded Mandates Reform Act, the National Environmental Policy Act, Executive Order 12988 (Civil Justice Reform), and the Paperwork Reduction Act, related to the agency's proposed upgrade to FMVSS No. 119, please see the September 29, 2010 NPRM.[13] As this SNPRM proposes only to unintentional errors to Table II and make technical corrections, it will not have any effect on the agency's analysis in those areas.

C. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

D. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend section 571.119 by revising paragraphs S7.3(f)(1), S7.3(f)(2) and Table II to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles.

* * * * *

S7.3 * * *

(f) * * *

(1) $W = [(F \times P)/2] \times 10^{-3}$

Where:

W = Breaking energy in joules (J),
F = Force in newtons (N), and
P = Penetration in millimeters (mm), or;

(2) $W = (F \times P)/2$

[11] 75 FR 60036.

[12] See Docket No. NHTSA–2010–0132–0002.

[13] 75 FR 60036.

Where:

W = Breaking energy in inch-pounds (in-lb),
F = Force in pounds (lb), and
P = Penetration in inches (in).

* * * * *

TABLE II—MINIMUM STATIC BREAKING ENERGY

[Joules (J) and Inch-Pounds (in-lb)]

Tire characteristic	Motorcycle		All 12 rim diameter code or smaller except motorcycle		Tubeless 17.5 rim diameter code or smaller and light truck		Tires other than light truck, motorcycle, 12 rim diameter code or smaller							
							Tube type greater than 12 rim diameter code				Tubeless greater than 17.5 rim diameter code			
Plunger diameter (mm and inches)	7.94 mm	5/16″	19.05 mm	3/4″	19.05 mm	3/4″	31.75 mm	1 1/4″	38.10 mm	1 1/2″	31.75 mm	1 1/4″	38.10 mm	1 1/2″
Breaking energy	J	in-lb	J	in-lb	J	in-lb	J	in-lb	J	in-lb	J	in-lb	J	in-lb
Load Range:														
A	16	150	67	600	225	2,000	.....	.....	.....	.....	.....	.....	.....	.....
B	33	300	135	1,200	293	2,600	.....	.....	.....	.....	.....	.....	.....	.....
C	45	400	203	1,800	361	3,200	768	6,800	.....	.....	576	5,100	.....	.....
D	.....	.....	271	2,400	514	4,550	892	7,900	.....	.....	734	6,500	.....	.....
E	.....	.....	338	3,000	576	5,100	1,412	12,500	.....	.....	971	8,600	.....	.....
F	.....	.....	406	3,600	644	5,700	1,785	15,800	.....	.....	1,412	12,500	.....	.....
G	.....	.....	.....	.....	711	6,300	.....	.....	2,282	20,200	.....	.....	1,694	15,000
H	.....	.....	.....	.....	768	6,800	.....	.....	2,598	23,000	.....	.....	2,090	18,500
J	.....	.....	.....	.....	.....	.....	.....	.....	2,824	25,000	.....	.....	2,203	19,500
L	.....	.....	.....	.....	.....	.....	.....	.....	3,050	27,000	.....	.....	.....	.....
M	.....	.....	.....	.....	.....	.....	.....	.....	3,220	28,500	.....	.....	.....	.....
N	.....	.....	.....	.....	.....	.....	.....	.....	3,389	30,000	.....	.....	.....	.....

Note: For rayon cord tires, applicable energy values are 60 percent of those in table.

* * * * *

Issued on: January 2, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–00315 Filed 1–9–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0034; 450 003 0115]

RIN 1018–AY68

Endangered and Threatened Wildlife and Plants; Listing the Blue-Throated Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the blue-throated macaw (*Ara glaucogularis*) as endangered under the Endangered Species Act of 1973, as amended (Act). This species is endemic to a small area in Bolivia, and there are estimated to be fewer than 150 individuals remaining in the wild. Its population continues to decrease despite intense conservation efforts. The primary threat to the species is lack of reproductive success (loss of nestlings) due to nest failure, which primarily is caused by competition for nest sites and predation by larger avian species, in addition to diminished availability of suitable habitat. We seek information from the public on the proposed listing for this species.

DATES: We will consider comments and information received or postmarked on or before March 11, 2013. We must receive requests for a public hearing by February 25, 2013. See Public Hearing section under **SUPPLEMENTARY INFORMATION** for more information.

ADDRESSES: You may submit information by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search field, enter FWS–R9–ES–2012–0034, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Comment Now.'' If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.
- *By hard copy:* U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R9–ES–2012–0034, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final actions resulting from this proposed rule be based on the best scientific and commercial data available. Therefore, we request comments or information from the Government of Bolivia, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of this species.

(2) Information on the effects of habitat loss and changing land uses on

the distribution and abundance of this species and its principal food sources over the short and long term.

(3) Information on whether changing climatic conditions (i.e., increasing intensity of storms or drought) are affecting the species, its habitat, or its food sources.

(4) Information on the effects of other potential threat factors, including live capture and collection, predation by other animals, and diseases of this species or its principal food sources over the short and long term.

(5) Information on management programs for its conservation, including mitigation measures related to conservation programs, and any other private or governmental conservation programs that benefit this species.

(6) Genetics and taxonomy.

(7) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by the date specified above in **DATES**.

Previous Federal Actions

On May 6, 1991, we received a petition (1991 petition) from Alison Stattersfield, of the International Council for Bird Preservation (ICBP), to list 53 foreign birds under the Act, including the blue-throated macaw, which is the subject of this proposed rule. We took several actions on this petition. On December 16, 1991, we made a positive 90-day finding and announced the initiation of a status review of the species included in the 1991 petition (56 FR 65207, published December 16, 1991). On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition. In that document, we announced our finding that listing 38 species from the 1991 petition, including the blue-throated macaw, was warranted but precluded because of other listing actions. The blue-throated macaw was assigned a listing priority number (LPN) of 2. Species are assigned LPNs based on the magnitude and immediacy of threats, as well as their taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources. An LPN of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of the blue-throated macaw as a full species.

Previously published petition findings, listing rules, status reviews, and petition finding reviews that included foreign species are listed in the Annual Notice of Review (ANOR) that published on May 3, 2011 (76 FR 25150). In our ANORs, we announce our annual petition findings for foreign species, as required under section 4(b)(3)(C)(i) of the Act. When, in response to a petition, we find that listing a species is warranted but precluded by higher priority listing actions, we must review the status of the species each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent status reviews and the accompanying 12-month findings are referred to as ''resubmitted'' petition findings. In the May 3, 2011, ANOR, we announced that listing was warranted but precluded for 20 foreign species, including the blue-throated macaw, which is the subject of this proposed rule. Additional information on this species may be found in that ANOR.

Background

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

In this document, we propose to add this species as endangered to the Federal List of Endangered and Threatened Wildlife. Prior to issuing a final determination on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Species Information

Taxonomy

The taxonomic status of this species was disputed until fairly recently. The blue-throated macaw was previously considered an aberrant form of the blue-and-yellow macaw (*A. ararauna*), but these two species are known to occur sympatrically (in the same location) without interbreeding (Kyle 2007a; del Hoyo *et al.* 1997). Common names in Spanish for the blue-throated macaw include guacamayo barba azul and guacamayo caninde. Both BirdLife International (BLI) and the Integrated Taxonomic Information System (ITIS) recognize the blue-throated macaw as *Ara glaucogularis.* ITIS (*www.itis.gov*) is a database maintained by a partnership of U.S., Canadian, and Mexican federal government agencies, other organizations, and taxonomic specialists to provide taxonomic information. Therefore, we accept the species as *Ara glaucogularis.*

Population

When the blue-throated macaw population was investigated as of 1998, the species was located in eight locations and the population was believed to be 100–150 individuals (Loro Parque Fundación (LPF) 2002, p. 13). The estimate provided by BirdLife International indicates that the total wild population is estimated to be 73–87 mature individuals (BLI 2012), which is a decrease from an estimate of between 50 and 300 birds when our previous ANOR was published. In October 2004, a small new population was found at Santa Rosa, 100 km (62 mi) west of locations believed to be the western-most edge of its range (LPF 2012; Herrera *et al.* 2007, p. 18). Biologists surveying for this species in 2004 found more birds than in previous surveys by searching specific habitat types (palm groves and forested islands) (Herrera *et al.* 2007, p. 18). In 2007, a population of approximately 25

individuals was found one hour south of Trinidad (Kyle 2007a, p. 6). Also in 2007, a flock of approximately 70 birds was observed near the Rio Mamoré (Asociación Armonía), in the vicinity of where the Barba Azul Nature Reserve is now.

In and around the Barba Azul Nature Reserve, there are believed to be approximately 100 individuals (Herrera 2012, pers. comm.; Kingsbury *et al.* 2010, p. 70). Currently, experts working locally with this species estimate that there are between 115 and 250 birds known to remain in the wild (Herrera 2012, pers. comm.; Gilardi 2012 pers. comm.). LPF's 2010 annual report (p. 15), stated that approximately 300 individuals were believed to remain in the wild. However, this may be an overestimate—the population found at the Barba Azul Nature Reserve may be the same birds that are monitored in the southern and eastern parts of its range during the breeding season; it is likely the population is nearer to 115 individuals (Gilardi 2012 pers. comm.).

In captivity, more than over 1,000 individual blue-throated macaws are likely held worldwide according to the 2011 North American Regional Studbook (Anderson 2011, p. 4).

Species Description

Blue-throated macaws have a blue throat, a bare, white face containing identifiable blue-streaks, dark grey irises, and a large black bill (Anderson 2011, p. 4; Kyle 2007b, p. 16). Its forehead is also blue and there is a lack of contrast between its remiges (large flight feathers on the wing) and upperwing coverts. This species is approximately the same size (85 cm or 33 inches) as the blue-and-yellow macaw. However, blue-throated macaws are not as competitive as the blue-and-yellow macaw in obtaining nesting cavities (Kyle 2007a). Male blue-throated macaws are larger than females at about 800 grams (1.76 pounds), and females weigh approximately 600 grams (1.32 pounds) (Kyle 2007b, p. 16).

Blue-throated macaws, like other parrot species, are monogamous and tend to mate for life. There is also a significant investment in the care for their young—blue-throated macaws are not fully independent of their parents for a full year (Berkunsky 2010, p. 5). Therefore, some breeding pairs may not produce nestlings every breeding season. The blue-throated macaw forms its nests in large tree cavities; its preferred nesting tree is the motacú palm (*Attalea phalerata*), which is native to Bolivia, Brazil, and Peru. The northern population of blue-throated macaws breeds between August to November, and the southern population breeds between November to March (Berkunsky 2012 pers. comm.; Kyle 2007a). The southern population, an hour south of Trinidad, tends to breed around the same time as the more commonly found blue-and-gold macaw. This overlap of breeding seasons adds to competition for nest sites. Blue-throated macaws are sexually mature between 6 and 8 years (Strem 2008; Kyle 2007a, p. 6). Females lay one to three eggs per clutch and incubate for 26 days. One to three hatchlings are raised, depending on food availability (BLI 2010; Kyle 2007a). Nestlings fledge between 13 and 14 weeks. Blue-throated macaws are seen traveling mostly in pairs but also have been seen in a large flock of between 70 and 100 individuals (Herrera 2012, pers. comm.; Macleod *et al.* 2009, p. 15; Waugh 2007a, p. 53).

Diet

This species seeks areas where palm fruits and suitable nesting cavities are readily available (Herrera *et al.* 2007, pp. 18–24). It feeds on fruits of approximately 12 species of trees (Kyle 2007a, pp. 1–10). There are 84 species of palms in Bolivia (Moraes *et al.* 2001, p. 234) and approximately 11 palm species within the blue-throated macaw's range. Blue-throated macaws prefer the fleshy part of the fruit, or mesocarp, of motacú, *Mauritia flexuosa* (royal palms or carandai-guazú), and *Acrocomia aculeata* (common names include: Coyoli palm, gru-gru palm, macaw palm, acrocome, Coyolipalme, amankayo, corojo, corozo, baboso, tucuma, and totai) (Herrera 2007, p. 20; Yamashita and M. de Barros 1997, p. 144; Jordan and Munn 1993; *www.ars-grin.gov, www.pacsoa.org.au*). The macaws first puncture the apex of the mesocarp and remove the outer layer (Yamashita and M. de Barros 1997, p. 144). The motacú continually produces fruit throughout the year. Between 80 and 90 percent of motacú palms produce fruits all year, but its peak is between July and December (LPF 2003, p. 21; Moraes *et al.* 1996, p. 424). Motacú is believed to be pollinated by beetles in the *Mystrops* genus (Moraes *et al.* 1996, p. 425). The same palm tree may produce at any one time between three and five racemes (flowering stalks, each with fruits in a different stage of development ripeness) (Yamashita and M. de Barros 1997, p. 144).

The species has also been observed at clay licks (Kyle 2007a, p. 2), which are clay banks where they consume soil or minerals; however, the reason for the clay consumption remains unclear.

Range and Habitat Description

The blue-throated macaw is endemic to the tropical savanna ecoregion of north-central Bolivia in the Department of Beni (LPF 2010; Kingsbury 2010, p. 8). This ecoregion is approximately 160,000 square kilometers (km^2) (61,776 square miles (mi^2)). (See Appendix A in Docket no. FWS–R9–ES–2012–0034 at *http://www.regulations.gov* for a map of the region (hereinafter referred to as ''Appendix A'')). Within this region, the blue-throated macaw is found mostly in widely dispersed isolated pairs within an area estimated to be between 8,000 and 12,900 km^2 (3,089 and 4,981 mi^2), (LPF 2012; BLI 2012; Hesse 2000, p. 104). The species is found at elevations between 200 and 300 m (656 and 984 ft) (Yamashita and M. de Barros 1997, p. 144; Brace *et al.* 1995). The blue-throated macaw's habitat was occupied by humans for thousands of years before European colonization (Erickson 2000, p. 2). Its habitat consists of lowlands in an area known as Llanos (plains) de Mojos, also known as Llanos de Moxos (LPF 2010; Mayle *et al.* 2007, p. 301; Yamashita and M. de Barros 1997, p. 141). See Appendix A for a photo representing the flooded habitat. The Llanos de Mojos is a wide savannah plain with poor drainage and in the wet season is extremely susceptible to flooding. The floods cover large areas of the plains and the area may remain flooded for 5 to 7 months in some areas. These plains include parts of the river basins of the Iténez, Mamoré, Beni, and Madre de Dios Rivers (see Appendix A for a map; Yamashita and M. de Barros 1997, p. 144).

The blue-throated macaw's habitat has progressively diminished over thousands of years and its habitat is now primarily restricted to small ''islands'' of suitable habitat within privately-owned cattle pastures (see Appendix A in Docket no. FWS–R9–ES–2012–0034 at *http://www.regulations.gov* for a photo illustrating these islands; Milpacher 2012 personal communication; Kingsbury 2010, p. 72; Berkunsky 2008, p. 4; Kyle 2007a, p. 4; Kyle 2006, p. 7; LPF 2003, p. 6). The species has been observed in the Barba Azul Nature Reserve. The blue-throated macaw is believed to occur on ranches adjacent to the Barba Azul Nature Reserve, Ranches Las Gamas, Los Patos, Pelotal, and Juan Latino, but the status of the species is unclear in these areas (Kingsbury 2010, p. 89). In other parts of the species' range, the species is believed to occur on the ranches *Elsner with Espíritu,* San Rafael, and the Estancia El Dorado, however, to the best of our knowledge,

these are privately managed and the species is not being monitored on the ranches.

Palm Islands

Palm-dominated forest islands form the blue-throated macaw's primary habitat. These ''islands'' are on elevated terrain and are sometimes referred to as ''alturas'' (high ground). The islands were primarily formed as mounds resulting from prehistoric human existence in this region (Erickson 2008, pp. 168–169). The lowlands are frequently inundated by water due to the flooding of nearby rivers (see Appendix A). Historically, human cultures manipulated the water flow to create plains that were higher and subsequently drier (Erickson 2008, pp. 168–169). The mounds are common throughout the savannas and wetlands of Bolivia; there may be as many as 10,000 of these mounds or islands in Bolivia (Erickson 2008, p. 169). They have been found to vary in size from a few hectares to many square kilometers (Erickson 2008, pp. 168–169; Yamashita and M. de Barros 1997, p. 144). Most are raised less than one meter and are often surrounded by ponds or moat-like ditches (Erickson 2008, pp. 168–169). Typically, these islands are surrounded by seasonally-flooded grasslands. These islands are between 0.2–1.0 ha (0.49–2.47 ac) in size and are approximately 130–235 meters (426–771 feet) above sea level (Kingsbury *et al.* 2010, p. 71; Yamashita and M. de Barros 1997, p. 144).

Besides motacú, palm species found on these islands are typically *Syagrus botriophora* (sumuqué), and *Astrocaryum vulgare* (chontilla), interspersed with semi-deciduous emergent trees such as *Enterolobium cortisiliqun* (parota or orejón), *Sterculia striata* (no common name (NCN)) and *Tabebuia heptaphilla* (Lapacho negro), and the Curupau tree (*Anadenanthera colubrina)* (also known as yopo, vilca, huilco, wilco, cebil, or angico) (Kyle 2005, p. 7). Some trees such as *Ceiba pentandra* (mapajo or kapok tree) and *Hura crepitans* (common names include catahua, Ochoo, arbol del diablo, acacu, monkey's dinner-bell, habillo, ceiba de leche, sandbox tree, possum wood, dynamite tree, ceiba blanca, assacu, and posentri) can reach more than 40 m (131 ft) in height.

The motacú palms may have survived on the mound islands for various reasons—their value to human cultures, their resistance to burning, and their ecological suitability to the microclimate. Motacú is not only vital to the life history of blue-throated macaws; it also has local, commercial, and ecosystem importance (Kyle 2005, p. 3; Moraes *et al.* 1996, pp. 424–425). This species of palm is used in the local community as thatch for housing which can last up to seven years. Its fruit is consumed by humans and various other species, and parts of the palm tree are used to make baskets, brooms, and is sold commercially as palm oil (Zambrana *et al.* 2007, p. 2785; Moraes *et al.* 1996, pp. 425–426).

Significance of Palm Islands to Blue-Throated Macaws

Habitat favored by blue-throated macaws contains tall, mature trees in areas with continuous motacú palm fruit production (Yamashita and M. de Barros 1997, p. 145). Densities of motacú, the blue-throated macaw's preferred nesting and feeding source, vary greatly. In the 1997 Yamashita and M. de Barros study, macaws were only observed in areas where motacú represented more than 60 percent of the trees.

Natural cavities in dead or decaying trees (usually motacú palms) are the primary source of nesting sites for this species. Blue-throated macaws prefer dead trees that have cavities with a minimum internal diameter of 30 cm (11.8 in) for nesting, and, therefore, the tree must have a diameter at breast height of 60 cm (23.6 in) or greater (see Appendix A for a picture representing a tree cavity; Yamashita and M. de Barros 1997, p. 145).

Factors Affecting the Species

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above factors, singly or in combination. Each of these factors is evaluated and a summary is presented in this document.

Loss of Palm Islands Due to Habitat Conversion

Within the past few hundred years, the blue-throated macaw lost much of its remaining habitat due to conversion of palm forests to pasture for cattle grazing. Cattle are not native to Bolivia; they were introduced to Bolivia in the 1600s. After the Second World War, cattle ranching and the associated burning of pastures began to have a significant impact on the landscape (Robison *et al.* 2000, p. 61). The macaw's preferred habitat is now limited to a few small, isolated islands of suitable habitat which are surrounded by these cattle ranches (Gilardi 2012 pers. comm.). During the flooding season which can occur up to six months of a year, cattle take refuge on the motacú palm islands because the islands are drier due to their higher elevation (LPF 2003, p. 33). Adding to habitat loss, in the preferred habitat of the blue-throated macaw where these motacú palms remain (within privately-owned cattle ranches), local ranchers typically burn the pastures annually (Berkunsky 2008, p. 4; del Hoyo 1997). This type of burning results in almost no recruitment of native palm trees, which are vital to the ecological needs of the blue-throated macaw (Yamashita and M. de Barros 1997, p. 144). The reduction in habitat (reduced availability of motacú palms) and lack of recruitment of motacú palms is a concern for the future because it takes several years for motacú palms to be able to produce fruit and to develop into a size suitable for nesting cavities. As mitigation, there are local conservation efforts to attempt to not only plant trees that provide food for blue-throated macaws, as well as education efforts directed towards land-owners within the range of the blue-throated macaws.

The lack of nesting cavities (suitable habitat) is often a limiting factor for bird species that depend on these cavities for nesting (Sandoval and Barrantes 2009, p. 75; Kyle 2006, p. 8). Blue-throated macaws requires specific nesting cavities for raising their young which provide an environment where they are safe from predation and flooding. Additionally, many different species compete for nest sites because there is a lack of suitable nest sites in the Llanos de Mojos due to habitat loss. This loss of suitable trees has resulted in increased competition from other species for these nesting cavities as well. The loss of habitat has contributed to other factors that affect blue-throated macaws such as an increase in vulnerability to predation, extreme weather events, and competition for nests, which are discussed below.

Nest Failure

Nest failure (the failure of nestlings to survive to fledgling stage) continues for various reasons, despite intensive conservation efforts (Berkunsky 2010, p.

4; Kyle 2006, p. 8). Some of the primary causes of nest failure have been predation, infestation by botflies (parasites in the *Philornis* genus), exposure to severe weather events such as flooding, and competition with other species such as bees (Berkunsky 2010, pp. 4–5). Many nestlings die in early developmental stages, often due to starvation (due to lack of food and parental neglect), exposure to cold temperatures, or flooding (Kyle 2007a, pp. 1–10). If parents do not have access to enough nutritional food sources, some nestlings are neglected so that their other nestlings will survive. Sometimes nestlings can also fall out of collapsed trees before they have fledged. During five field seasons of closely observing nest sites, often 50 percent of nestlings died (Berkunsky 2008, p. 5; Kyle 2007a, pp. 7–8). See additional discussion below under *Exposure to extreme weather events* section.

Predation

Predation stands out as one of the main reasons why this species' population is not increasing (Kyle 2007a, pp. 3, 6–7; Kyle 2006, p. 8). As an example, during one season, of the seven active blue-throated macaw nests found, all of the nestlings within three nests were lost to predation (Kyle 2007a, pp. 6–8). Because the species has such a small population size with likely fewer than 150 remaining in the wild), losses such as this have a significant effect. Predators of the blue-throated macaw include:

Toco toucan (*Ramphastos toco*),

Crane hawk (*Geranospiza caerulescens*),

Great-horned owl (*Bubo virginianus*), and

Southern crested caracara (*Caracara plancus,* a bird of prey).

The blue-throated macaws' habitat of sparse, palm-forested islands scattered among natural grasslands, is especially vulnerable to nest predation (Kyle 2007a, pp. 6–7). Tree nest cavities chosen by blue-throated macaws tend to be very visible to other avian species flying overhead. In addition to choosing nests in palm islands, blue-throated macaws are also known to nest in isolated palms in open fields, which are even more exposed than nesting in palm islands (Herrera *et al.* 2007, p. 20). All of the species that predate on adult blue-throated macaws, eggs, or nestlings have large distributions and are commonly found at the habitat islands used by blue-throated macaws (Kyle 2007a, pp. 6–7). Great horned owls have been seen at almost every site where blue-throated macaws are nesting and monitored (Kyle 2007a, p. 6). These owls, native to South America, have a vast range, are the most widely distributed owl in South America, and occupy a variety of habitats including open forest, farmland, and grassland.

Because blue-throated macaw nests are concentrated in these small ''islands'' of trees within cattle pastures, they are more easily located by predators than species that nest in a continuous forest setting. To discourage and mitigate the effects of predation, some conservation activities being conducted include the monitoring and discouragement of predators from attacking blue-throated macaw nests. These efforts are extremely intensive for each nest. In one case, where it appeared the nest tree was collapsing, the tree was monitored all night by conservation staff (Kyle 2007a, p. 9). Often trees containing active nests are monitored in this way if persistent predation has been observed. The mitigation efforts are helpful—if nestlings can survive until they are at least 300 grams (0.66 pounds), they have a greater chance of survival (Kyle 2007a, p. 7).

Botfly parasites can also cause mortality of nestlings and have been observed in blue-throated macaw nestlings. Botflies live subcutaneously, and feed on macaws before pupating (Wunderle Jr. and Arendt 2011, p. 39). Botflies significantly reduce the energy available for nestling growth and development (Uhazy and Arendt 1986 in Wunderle Jr. and Arendt 2011, p. 39) and can cause high death rates of nestlings. In one study of avian nestlings, botfly parasitism caused 56 percent of mortalities while egg and chick losses from nest predators and competitors accounted for less than 10 percent of reproductive failures (Arendt 2000 in Wunderle Jr. and Arendt 2011, p. 39).

Exposure to Extreme Weather Events

Due to their preferred nesting location, blue-throated macaws are also vulnerable to natural catastrophic events such as flooding, drought, and other stochastic disturbances (Kyle 2006, pp. 5–6). Bolivia is described as a ''climatically volatile region'' and is one of the countries in the world most affected by natural disasters in recent years (Oxfam International 2009, p. 5). This species' habitat experiences radical changes over the course of a year.

For many months of the year its habitat is flooded, and other times during the year, its habitat suffers from severe drought. High rainfall occurs during the summer months; the wet season is between September and May. Annual precipitation is between 1,100–2,500 millimeters (43–98 inches) (Haase & Beck 1989 in Kingsbury 2010, p. 9). Very heavy periods of rainfall in this region can continue for long periods of time (Kyle 2006, pp. 5–6; Hanagarth and Sarmiento 1990 in Beck and Moraes, undated). Every 6–12 years, 80–90 percent of the region is inundated (Beck and Moraes, undated). This cyclical flooding may be an El Niño event, but there has been no study correlating the phenomena (Mayle et al. 2007, p. 294, Beck and Moraes, undated). Although these areas are seasonally-flooded, they are also prone to periods of drought (Kyle 2007a, p. 3, Mayle et al. 2007, p. 294; Yamashita and M. de Barros 1997, p. 144).

Severe storms, such as one that occurred in 2005 are described as ''nest killers.'' These severe storms cause the dead palm trees in which the nests have been constructed to collapse or flood (Kyle 2007b, p. 15) which causes nest failure for the season and subsequently no recruitment. During periods of drought, nestlings are sometimes neglected and starve. Heavy storms and rain contribute to nest failure; if nestlings are exposed to cold weather and rain, they may die.

Dead palm trees often collapse in these storms. During the 2006–2007 season, this phenomenon was observed when the nest of one blue-throated macaw pair in a motacú dead palm tree collapsed due to strong winds (Kyle 2007a, p. 4). Although the reason is unclear, these dead palm trees are currently the preferred sites for nest construction by the blue-throated macaw and they have strong nest site fidelity (Berkunsky 2012 pers. comm.). The extent this behavior is learned and modified is also unclear. However, researchers are working with this species to introduce nest sites that are safer and less prone to predation and nest failure due to extreme weather events such as flooding (Berkunsky 2010, pp. 4–5). Flooding, a significant cause of nest failure in the recent past, is reported not to have occurred in nests that have been intensely monitored and human-manipulated since 2008. This is due to one of the conservation measures in place: drilling drain holes in the nests and at the bottom of the dead palm trees in order to prevent nest flooding. However, flooding can still occur if nests are not monitored and manipulated.

Competition for Nest Sites

In addition to nest failure, there is a shortage of nests. As described above, there is little remaining of the preferred habitat of motacu palms. The species appears to ''learn'' nesting sites, and

will re-use nesting locations that they had used in the past (Berkunsky 2010; Kyle 2007a, p. 4). Although it is unclear why blue-throated macaws choose to nest in the top of dead motacú palms and are subsequently exposed to predation, competition from other species for nests, drought, excessive rainfall and nest flooding, it is their preferred nesting tree because it provides easy access to their preferred food source. Many species, in addition to the blue-throated macaw, use the motacú palm for feeding and nesting. In the Llanos de Mojos, there are 21 species of parrots which may compete for nest sites (Kingsbury *et. al.* 2010, p. 83; Yamashita and M. de Barros 1997, p. 144). Some species known to compete for nest sites with the blue-throated macaw include the blue and gold macaw, woodpeckers, and bees (Kyle 2007a, p. 6; LPF 2003, p. 33).

In order to provide more choices for nesting habitat, conservation organizations are installing nest boxes. n 2009, in the Barba Azul Nature Reserve, 46 artificial nests were monitored, in part by video cameras; however, the majority of them (24 nests) were occupied by blue and gold macaws (LPF 2010, p. 15). Likely due to the larger size of the blue and gold macaw or perhaps their more aggressive nature, the blue and gold macaws usually win most confrontations for nests (Kyle 2007a, p. 6). During the 2010 field study at the Barba Azul Nature Reserve, researchers also observed that there were a greater number of blue and gold macaws using the Barba Azul Nature Reserve than blue-throated macaws (Kingsbury 2010, p. 83). At an area where both species were drinking water, researchers noted that the blue-throated macaws exhibited agitated behavior when blue and yellow macaws were nearby (Kingsbury 2010, p. 83). Although the Barba Azul Nature Reserve was established specifically for the blue-throated macaws, other species use the reserve and compete for nesting sites.

To mitigate this problem, at least two conservation organizations are installing nest boxes to create more available sites for nesting, but despite the past 10 years of conservation efforts and experimentation with nest boxes, nest failure still occurs. In addition to predation, other reasons for nest failure are numerous, which has instigated the experimentation and installation of these nest boxes. Bees and other species continue to compete with blue-throated macaws for these nest boxes. After many years of experimentation, the nest boxes are slowly becoming more effective at providing suitable nesting sites. The blue-throated macaws seem to habituate to certain nesting sites and locations likely based on food availability and learned behavior.

Although blue-throated macaws have begun to use some of the nest boxes, it has been a slow and tedious process to encourage blue-throated macaws to use these boxes, and the population continues to suffer losses, particularly due to nest failure, which the installation of suitable nest boxes is attempting to alleviate. When nests fail (no nestlings survive that season), a significant amount of effort has been expended by that breeding pair. Because this species has such a small population (likely there are less than 150 individuals remaining), each time a nestling survives to become an adult, it is extremely significant to the population. Macaws tend to mate for life, so each individual blue-throated macaw is extremely valuable to the population, particularly. The species also cares for its young over two seasons, so each pair of macaws invests a significant amount of energy into its young. The effect of the death of each new nestling on the population of blue-throated macaws is devastating to the viability of the population. If the nestlings survive the first season to the point they fledge, their chances of survival are much greater than when they are new nestlings when they are entirely dependent on their parents for survival.

Bees can also make both natural nesting cavities and man-made nest boxes inhospitable for blue-throated macaws (Berkunsky 2008, p. 5). At the beginning of one breeding season, 67 percent of nest boxes monitored were occupied by bees (Berkunsky 2008, p. 5). After being removed, bees had returned within 2 weeks. Most naturally occurring nest sites, because there are so few of them and they are in demand by numerous species, require intense monitoring and manipulation in order to maintain an attractive, suitable environment for the blue-throated macaws for nesting.

Disease

Macaws are susceptible to many bacterial, parasitic, and viral diseases, particularly in captive environments (Kistler *et al.* 2009, p. 2,176; Portaels *et al.* 1996, p. 319; Bennett *et al.* 1991). Macaws are prone to many viral infections such as retrovirus, pox virus, and paramyxo virus which can cause weakened immune systems and subsequent death (Gaskin 1989, pp. 249, 251, 252). Recently, histopathological examination revealed the likely presence of the pox virus in dead blue-throated macaw nestlings, indicating that close contact between blue-throated macaws and domestic poultry may be facilitating pathogen transmission to this highly vulnerable species (Wildlife Conservation Society (WCS) *in litt.* 2011). In one location within the very limited range of the blue-throated macaw, blue-throated macaws share water sources with chickens, ducks, and other avian species (WCS *in litt.* 2011; Kingsbury 2010, p. 83). Blue-throated macaws in this area are being closely monitored to decrease the possibility of transmission of the pox virus; however, it is still a concern.

Proventricular dilatation disease (PDD) is one of the worst diseases known to affect parrots (Kistler *et al.* 2008, p. 2). PDD, also known as avian bornavirus (ABV) or macaw wasting disease, is a fatal disease that poses a serious threat to all domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Abramson *et al.* 1995, p. 288). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100-percent mortality rate in affected birds, although the exact manner of transmission between birds is unclear (Kistler *et al.* 2008, p. 1). PDD has been documented in several continents in more than 50 different parrot species and in free-ranging species in at least five other orders of birds (Kistler *et al.* 2008, p. 2). This disease is somewhat concerning because blue-throated macaws share water sources with other species of birds, and this disease could be transmitted between individuals that are within close range.

This species is closely monitored in the wild; conservationists working with this species are taking precautions so that diseases are not introduced into the wild population. Despite close monitoring and precautions, disease is likely to affect this extremely small population; therefore, we are concerned that diseases will become problematic to this species in the wild.

Small Population Size

An additional factor that affects the continued existence of this species is its small, declining population of likely less than 150 individuals. Recently, two disturbing observations have been made: Malformations in chicks and reduced fertility in many reproductive pairs (WCS *in litt.* 2011). Small, rapidly declining populations of species, combined with other threats such as reduced reproductive success, leads to an increased risk of extinction (Harris and Pimm 2008, p. 169). This species

faces many challenges—it has many predators, limited suitable habitat, and competition from other species for nest sites, in addition to its small population size. Any loss of potentially reproducing individuals could have a devastating effect on the ability of the population to increase. Small populations have a higher risk of extinction due to random environmental events (Shaffer 1981, p. 131; Gilpin and Soule 1986, pp. 24–28; Shaffer 1987, pp. 69–75). Because of its small population and restricted range, the blue throated macaw is vulnerable to random environmental events; in particular, it is threatened by extreme precipitation events and nest flooding.

Removal From the Wild

Removal of parrots from the wild over the past few hundred years contributed to this species' small population size ((LPF 2012; Herrera and Hennessey 2009, p. 233; Kyle 2007a). Macaws, both live and dead, have been a significant part of Bolivian culture for thousands of years. Evidence of this exists in pre-Colombian Andean feather art (American Museum of Natural History 2012). Feathers have been used historically in headdresses; and parrots have been used in ceremonial sacrifices (American Museum of Natural History 2012; Berdan 2004, p. 4; Creel and McKusick 1994, pp. 510–511). Feathers of blue-throated macaws would still be used for headdresses today if it were not for intervention and education programs implemented by nongovernmental conservation organizations (NGOs) (BLI 2012; LPF 2010; LPF 2003, p. 29). In addition to being used in ceremonies and costumes, there is evidence that parrots have been household pets since at least A.D. 1000 (Creel and McKusick 1994, pp. 513–515) as evidenced in burial remains; and live macaws very likely had commercial value even during that time period. Parrots were traded over long distances; archeological remains indicate that parrots were found well outside their native range (Creel and McKusick 1994, pp. 515–516).

The most significant impact to the decline of this species' population was likely due to collection for museums during the late 1800s and early 1900s (Yamashita and M. de Barros 1997, p. 144). During this time period, bird-skin traders of European descent sold thousands of bird skins, especially to museums in the United States for at least three generations (Smithsonian National Museum of Natural History 2012; Yamashita and M. de Barros 1997, p. 144; Trimble 1936, pp. 41–43).

The Inadequacy of Existing Regulatory Mechanisms

Under the Act, we are required to evaluate the whether the existing regulatory mechanisms are adequate. There are limited legal mechanisms in place to protect this species (de la Torre *et. al.* 2011, p. 334; Herrera and Hennessey 2007, p. 295; LPF 2003, p. 6–7). This species is considered critically endangered by the International Union for Conservation of Nature (IUCN) (BLI 2012; LPF 2012). However, IUCN rankings do not confer any actual protection or management. This species is listed in Appendix I of CITES (CITES 2012), which, along with the ban by the Bolivian Government in 1984 to export this species, effectively limits international trade (LPF 2012; Herrera and Hennessey 2009, p. 233–234; LPF Recovery Plan 2003, p. 7). CITES Appendix I includes species that are ''threatened with extinction which are or may be affected by trade.'' Species listed under Appendix I may not be traded for primarily commercial purposes. These protections were put in place because the species had suffered substantial population declines throughout its range due to habitat destruction and overexploitation. Within Bolivia, the government of Bolivia has enacted various laws and regulatory mechanisms to protect and manage wildlife and their habitats. For example, the Bolivian Government prohibits and takes sanctions against the possession and the traffic of any protected species such as the blue-throated macaw (LPF Recovery Plan 2003, p. 7). Further, a study published in 2011 noted that many institutional changes have occurred in recent years in Bolivia (de la Torre *et al.* 2011, p. 332). However, even after the export of this species was prohibited in the 1980s and despite the laws in place and the intense conservation efforts ongoing for this species, the species' population has not recovered and some localized illegal trade is still occurring.

International trade in this species is now negligible (*http://www.unep-wcmc.org,* accessed June 4, 2012). International trade of the blue-throated macaw was initially restricted by the listing of the species in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1981, and in 1983, the species was transferred from Appendix II to Appendix I. CITES regulates international trade in animal and plant species listed under the Convention. For additional information on CITES, visit *http://www.cites.org/*. Between 1981 and 1985, 134 Blue-throated Macaws were reported to have been exported to the United States (TRAFFIC 1987 in Herrera and Hennessey 2007, p. 296). However, no specimens of blue-throated macaws have been exported from Bolivia since 1984 when Bolivia banned the export of this species (*http://www.unep-wcmc.org,* accessed June 4, 2012).

Although international trade is not a concern, poaching for local sale continues to occur (LPF 2012; Herrera and Hennessey 2009, p. 233; Kyle 2007a). Although Bolivia banned the export of live parrots in 1984 (Brace et al. 1995, pp. 27–28), localized illegal trade within South America continued to occur, although it became less frequent (Herrera and Hennessey 2009, p. 233). For example, in 1993, investigators reported that an Argentinean bird dealer was offering Bolivian dealers a ''high price'' for blue-throated macaws (Jordan and Munn 1993, p. 695).

More recently, a study of markets in Santa Cruz, Bolivia estimated that over 22,000 individuals of 31 parrot species were illegally traded during 2004–2005 despite Bolivian laws (Herrera and Hennessey 2007, p. 298). Bolivian Law 1333 (Ministerio de Desarrollo Sostenible y Planificacion 1999), Article 111 states that all persons involved in trade, capture, and transportation without authorization of wild animals will suffer a two-year prison sentence together with a fine equivalent to 100 percent of the value of the animal. This law is supported by an addendum that states that all threatened species are of national importance and must be protected (Herrera and Hennessey 2007, p. 295). Asociación Armonía (a nonprofit organization in Bolivia) monitored the trade of wild birds that passed through a pet market in Santa Cruz, Bolivia, from periods between July 2004 to December 2007 (Herrera and Hennessey 2009, p. 233; Herrera and Hennessey 2007, p. 295). During the 2004–2005 study period, none of the parrots found were blue-throated macaws. In 2006, two blue-throated macaws were found for sale (Herrera and Hennessey 2009, p. 233). However, the blue-throated macaw was absent in the market during the monitoring period prior to 2006 and no blue-throated macaws were found for sale in this market in 2007 (Herrera and Hennessey 2009, p. 233; Herrera and Hennessey 2007, p. 295). This absence of the species in the market may be due either to the effectiveness of the ongoing conservation programs and laws in Bolivia, or it may be indicative of the scarcity of blue-throated macaws in the wild. Ninety-four percent of the birds

documented were believed to be wild-caught. This illegal activity occurs despite the national laws that ban unauthorized trade (Herrera and Hennessey 2007, p. 298).

The high value of this species could lead to continued illegal trade. An Internet search indicated that captive-bred specimens of this species sell for between $1,500 and $3,000 in the United States (*www.hoobly.com,* accessed September 13, 2010). One search advertised that this is a ''very rare species and there are only 300 left in the wild.'' However, alternatively, because these birds are not difficult to breed in captivity, the supply of captive-bred birds has increased which some experts believe may be alleviating illegal collection of wild birds (Waugh 2007a).

Removal of blue-throated macaws from the wild can have a particularly devastating effect given their low reproductive rate, and slow recovery from various environmental pressures (Lee 2010, p. 3; Wright *et al.* 2001, p. 711). In situations where the population is very small and the species is adding new individuals to the population at such a slow rate (due to high nestling mortality), any unauthorized removal from the wild will have a significant effect on the species' population. Some blue-throated macaws have even been used for fish bait (Kyle 2007a, p. 7). The remains of a blue-throated macaw were found near a lake stuffed into a tree cavity with a bag of salt (Kyle 2007a, p. 7). Because this species has so few individuals remaining, any removal from the wild is extremely detrimental to the survival of the species when taken into consideration with all of the other factors acting upon the species.

In-Situ Conservation

This species is considered by many organizations to be the most endangered macaw remaining in the wild (BLI 2012; World Parrot Trust (WPT) 2012; LPF 2010, LPF 2003, p. 4). Several NGCOs are working intensely on various conservation projects to protect this species and its habitat. Various NGCOs have been involved in the conservation of this species since 1995 with authorization from the Bolivian Government (Gilardi 2012, pers. comm.; LPF 2002, p. 10). NGCOs involved include Asociación Armonía (Bolivia's BirdLife International partner); the Loro Parque Fundación (LPF), and WPT. A Species Recovery Plan that provides the basis for the Blue-throated Macaw Conservation Program was approved by Bolivia's Ministry for Sustainable Development in 2004 and has been in place since then (LPF 2003, pp. 6–7).

Within its breeding range, a multitude of efforts are in progress to conserve the species (Gilardi 2012 personal communication; Berkunsky 2010, p. 5, Kyle 2007, pp. 1–11). Conservation measures include constant monitoring, protection, and manipulation of nests, supplementing nestlings' diet when food sources are scarce, agreements with private landowners, patrolling existing macaw habitat by foot and motorbike, and monitoring the Beni lowlands for additional populations (LPF 2012; Kyle 2007a; Snyder et al. 2000). Nongovernmental conservation organizations (NGCOs) have implemented cooperation agreements with the federation of cattle farmers of the Beni (FEGABENI) and the local authorities in Trinidad (LPF et al. 2003, p. 6).

Land acquisition to expand protected habitat for this species has been funded by the World Land Trust. In 2008, Asociación Armonía and LPF purchased a 3,555-ha (8,785-ac) reserve for the purpose of establishing a protected area for the blue-throated macaw (WorldLand Trust 2010, accessed July 16, 2010; BLI 2008). In 2010, the Barba Azul Nature Reserve was expanded by 1,123 hectares (ha) (2,775 acres (ac)), creating a total protected area for the blue-throated macaws of 4,664 ha (11,525 ac) (Asociación Armonía 2012). Currently, this Reserve is the only protected area designated for the blue-throated macaw. Legal protections that apply fall under Bolivian Law 1333 (Ministerio de Desarrollo Sostenible y Planificacion 1999), Article 111. This Reserve protects savanna habitat; and habitat restoration is occurring in the Reserve, although it is unclear the extent the Reserve is used by blue-throated macaws. The actual protections in place include monitoring of habitat, local education and awareness programs about the species, establishment of suitable nesting sites. Approximately 70 blue-throated macaws have been observed in or around this Reserve (Herrera 2012, pers. comm.); however, these macaws may be some of the same macaws that are observed in other parts of its range during the breeding season (Berkunsky 2012, pers. comm.).

Despite the existence of the reserve, there are no nests in the Reserve that are occupied by the blue-throated macaws (Herrera 2012, personal communication). Although blue-throated macaws do not use this area for breeding, there is evidence that they use the Reserve for feeding (Herrera 2012, personal communication; Kingsbury 2010, pp. 69–82). It appears that blue-throated macaws use the Reserve and adjacent ranches during the non-breeding season while their breeding-season habitat is seasonally-flooded (see Appendix A for a map of its range; Milpacher 2012, personal communication; Herrera 2012, personal communication). Other than the Barba Azul Nature Reserve, there are no protected areas in the Llanos de Mojos except the Beni Biosphere Reserve, which has been in existence since 1986. However, to our knowledge, the blue-throated macaw does not use the Beni Biosphere Reserve (Hesse and Duffield 2000, p. 258).

In addition to conservation efforts, the NGCOs working in Bolivia are conducting field research to better understand the current state of this species. However, the conservation work is extremely difficult due to the various factors that affect the species. Because the species' habitat is flooded for 6 months of the year, monitoring its habitat is impossible during certain seasons (Berkunsky 2010, p. 5). There have also been discussions of reintroducing captive-raised birds into the wild; however, this practice could inadvertently introduce disease into the wild population if precautions are not taken to minimize the transmission of disease to other blue-throated macaws.

Another conservation measure in place is research on the motacú palm (Milpacher 2012, personal communication) because the number of motacú palms is decreasing. This palm species plays a significant role in the life cycle of the blue-throated macaw. One study found that the old and senescent motacú palms significantly exceed the younger palms (LPF 2003, p. 21). Based on their findings, researchers concluded that the islands containing motacú are not regenerating motacú palms sufficiently. It is likely that the lack of regeneration is due to over-grazing by cattle and excessive use of fire over centuries (Kyle 2006, p. 5). WPT has recently attempted several small scale palm germination experiments to assess reestablishing palm habitat (Milpacher 2012, pers. comm.). The motacú palm has commercial value in addition to its ecological role. Palm trees are used for a multitude of purposes such as thatch for housing, fruit, and palm oil (de la Torre *et al.* 2011, pp. 327–369; Zambrana *et al.* 2007, pp. 2771–2778). Motacú palm-dominated islands may have persisted in part due to their various ecological and commercial values, but they certainly persist in part because the islands are raised areas within the lowlands areas that are prone to flooding. With respect to the short-term, local researchers believe that there will be adequate motacú fruits in the

region for a few more decades (LPF 2003, p. 21); however, research on the motacú is vital to the conservation of the blue-throated macaw.

Educational awareness programs are in place in addition to research and monitoring. The Asociación Armonía is involved in an awareness campaign to ensure that the protection and conservation of these birds occurs at a local level (e.g., protection of macaws from trappers and the sustainable management of key habitats such as palm groves and forest islands, on their property) (Llampa 2007; BLI 2008a; Snyder et al. 2000). Two educational awareness centers have been established in the towns of Santa Ana del Yacuma and Santa Rosa del Yacuma (LPF 2010, p. 16). In response to the limited but continued poaching that occurs in the wild, LPF initiated a travelling exhibition, ''Extinction is Forever,'' which visited 17 urban localities in Bolivia in 2010 (LPF 2010, p. 15). The exhibition includes 21 photographs that explain the ancestral and present day relationship between people and birds, and highlights the effects of illegal trade of wild birds in Bolivia currently. An estimated 1,000 visitors attended each showing in the main cities (LPF 2010, p. 15).

In summary, the conservation efforts underway are abundant, but require significant effort. Reproductive success is vital to the blue-throated macaw recovery and this species faces many challenges to successfully reproducing. This species' nest often has an open crown (i.e. no roof) and is prone to flooding (Berkunsky 2010, p. 4; Kyle 2007a, p. 3). During many seasons, nests, eggs, and nestlings are destroyed due to flooding. Both WBT and Asociación Armonía have been conducting conservation activities such as installation of artificial nest boxes that provide safe habitat, manipulating nests so that they do not flood, and discouraging predators and nest competitors. The installation of a multitude and variety of nest boxes is a way to boost breeding success. Because many other species compete for these nest boxes, and blue-throated macaws tend to re-use previously-used nesting sites, the process of introducing nest boxes and encouraging blue-throated macaws to use them while discouraging other species from using them is a very time-intensive process. Despite all of these conservation efforts, fewer than 150 individuals of this species are believed to remain in the wild.

Other Factors

An additional factor that affects the nesting success of blue-throated macaws is the availability of food sources—not only the abundance of food, but the timing of its availability. Phenology (how the timing of plant life cycle events interacts with animal biological processes) is influenced by variations in climate. The timing of motacú palm fruit production is critical for various life stages of the blue-throated macaw, particularly during the period following hatching. The motacú palms, on which blue-throated macaws depend for nesting as well as feeding, are affected by drought, burning, and excessive rainfall. In years when there is significant drought or excessive rainfall, the fruiting abundance and timing of fruit production can significantly affect the success of nestlings, or it can prohibit blue-throated macaws from even attempting to nest (Kyle 2007). In some seasons when food is not as plentiful, breeding pairs may choose not to brood and the weakest of the nestlings are neglected by its parents and die of starvation (Kyle 2007a, pp. 4–5). During these times, in some cases, the diet is supplemented by these conservation organizations; however, it is a very intensive process.

In summary, there are many factors that are causing stress to this species' population. It is affected primarily by predation, nest flooding, and lack of nest sites. Combined with its reduced population size, the species lacks sufficient redundancy and resiliency to recover from present and future threats without intervention and intense conservation actions.

Finding (Proposed Listing Determination)

In assessing whether the blue-throated macaw meets the definition of a threatened or endangered species, we considered the five factors in section 4(a)(1) of the Act. A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. In considering what factors might constitute threats to a species, we must look beyond the mere exposure of the species to the factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. We conducted a review of the status of this species and assessed whether the blue-throated macaw is threatened or endangered throughout all of its range. On the basis of the best scientific and commercial information, we do not find that the factors affecting the species are likely to be sufficiently ameliorated in the foreseeable future.

A multitude of factors has contributed to the decline of this species' population. In the past, factors that significantly reduced the number of blue-throated macaws included habitat loss and overutilization for the pet trade and museum specimens (NMNH 2012; Berkunsky 2010, p. 4; Kyle 2005, pp. 6–10). Currently, the primary factors that impact the blue-throated macaws are:

- Lack of adequate nest sites (both in abundance and effectiveness);
- Failure to adequately reproduce: nest (clutch) failure (when one or all of the nestlings fail to survive to fledgling stage due to a variety of reasons such as starvation, inadequate nutrition, sibling competition, or other reasons);
- Nest flooding (if nests are not monitored and manipulated);
- Botflies;
- Potential inbreeding which results in malformations and reduced fertility and loss of genetic variability due to a small population size (WCS *in litt.* 2011);
- Competition for nests with more competitive species such as bees and other avian species such as other macaw species; and
- Predation by numerous species, particularly birds of prey such as toucans, owls, vultures, other raptors, and even other macaw species (Berkunsky 2010, p. 4; Kyle 2006, p. 4, Loro Parque Fundación 2003, p. 28).

All of these factors combined make the blue-throated macaw exceptionally vulnerable to extinction. The historical, current, and ongoing threats to the blue-throated macaw have reduced the population such that it is extremely small, and the remaining pairs face many challenges to successfully reproduce offspring. The blue-throated macaw is currently at risk throughout all of its range due to historical impacts of the cumulative habitat loss that resulted from manipulation of its habitat over time, and the current practice of maintaining cattle pastures do not adequately allow palm species to regenerate. In addition, overutilization for the pet trade and museum specimens has reduced the status of the species to the point that its population is vulnerable to permanent extirpation from the wild. This species is more vulnerable to the effects of disease and

predation than it would have been otherwise. The species is also affected by stochastic events such as extreme weather events, which cause nest flooding and knock down trees where it has formed nests; we expect this to continue into the future.

Despite protections in place and educational awareness programs, this species is still occasionally being removed from the wild. A conservation plan was finalized in 2003 by several NGCOs and has been in place for almost 10 years. Even though intensive efforts to recover and conserve this species and its habitat by at least three NGCOs are underway, the recovery plan has not met its goals: the population of this species is still likely less than 150 in the wild. This species' life-history traits (such as the long investment time to raise nestlings, reproduction does not usually occur until age 6; and pairs generally mating for life), make it particularly susceptible to extinction. Additionally, its populations are small, its remaining suitable habitat is small, the population may lack genetic diversity which is causing malformations in nestlings, and the species is not reproducing sufficiently. These threats are currently impacting blue-throated macaw throughout its range and will likely continue in the future.

This species experienced a sharp population decline in the past few hundred years because it has been removed from the wild for various purposes, and now it faces a multitude of factors that negatively affect its ability to reproduce. Although removal of this species from the wild was detrimental to this species in the past, we found that international trade is no longer a factor currently influencing the species' status in the wild; however, limited poaching continues to occur. Illegal capture for the local pet trade is exacerbated by the other factors acting on the species. The regulatory mechanisms in place are inadequate to mitigate the factors that are negatively affecting the species. The lack of success of the species to increase its population indicates that the laws governing wildlife and habitat protection in Bolivia are inadequate to protect the species or to mitigate these threats.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats affecting this species. Historically, the blue-throated macaw existed in much higher numbers in more continuous, connected habitat. As described above, there are many obvious factors that currently affect the blue-throated macaws. These include: inadequate nest sites (both in abundance and effectiveness), nest (clutch) failure (when one or all of the nestlings fail to survive to fledgling stage due to a variety of reasons such as starvation, inadequate nutrition, sibling competition), nest flooding, and botflies; competition for nests with more competitive species such as bees and other avian species such as large woodpeckers and other macaw species; and predation by numerous species, particularly birds of prey such as toucans, owls, vultures, other raptors, and even other macaw species.

Our review of the information pertaining to the five threat factors supports a conclusion that the imminence, intensity, and magnitude of the factors affecting the species occurs to an extent such that the threats to the blue-throated macaw, coupled with an extremely small population that has declined over the past few hundred years, place this species at risk of extinction throughout all of its range, such that a listing of endangered is warranted. The species is currently in danger of extinction because the species is at such low levels that it is vulnerable to stochastic environmental events, particularly predation and nest flooding. Given the species' low reproductive capacity and impaired genetic fitness, it is unable to increase to the levels of abundance that is able to withstand such events. We find that the blue-throated macaw is in danger of extinction now and, therefore, is appropriately listed as an endangered species. Therefore, we propose to list the blue-throated macaw as endangered under the Act.

Peer Review

In accordance with our joint policy with the National Marine Fisheries Service, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our final determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list the blue-throated macaw.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

Author(s)

The primary author of this proposed rule is Amy Brisendine, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding a new entry for ''Macaw, blue-throated'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Macaw, blue-throated.	*Ara glaucogularis*	Bolivia	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: December 31, 2012.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–00291 Filed 1–9–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120813331–2562–01]

RIN 0648–XC164

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule To Implement a Targeted Acadian Redfish Fishery for Sector Vessels; Reopening of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction and reopening of comment period.

SUMMARY: This action reopens the comment period for an Acadian redfish-related proposed rule that published on November 8, 2012. The original comment period closed on November 23, 2012. This action clarifies a bycatch threshold incorrectly explained in the proposed rule. The public comment period is being reopened to solicit additional public comment on this correction.

DATES: The comment period for the proposed rule published November 8, 2012 (77 FR 66947), is reopened. Written comments must be received on or before January 22, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0183, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go *to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0183,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Fax:* (978) 281–9135, Attn: William Whitmore.

• *Mail:* Paper, disk, or CD–ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Redfish Rule.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to

remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fisheries Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A proposed rule published on November 8, 2012 (77 FR 66947) that would implement addenda to fishing year (FY) 2012 Northeast (NE) multispecies sector operations plans and contracts to add additional exemptions from Federal fishing regulations for FY 2012 sectors. Specifically, the action would expand on a previously approved sector exemption by allowing groundfish sector trawl vessels to target redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, the action proposed to implement an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement.

The proposed rule published in the **Federal Register** with a 15-day comment period that closed on November 23, 2012. At the request of the New England Fishery Management Council (Council) and industry, we extended the comment period through December 31, 2012.

After further review of the proposed rule, it was found that one of the threshold measures was incorrectly explained. The proposed rule included a bycatch threshold to help mitigate catches of sub-legal sized groundfish. The rule proposed that ''total groundfish discards (excluding redfish discards), may not exceed 5 percent of all groundfish caught when directing on redfish with small mesh nets.'' This is incorrect. The bycatch threshold would account for total regulated groundfish discards, including redfish discards. This is how the threshold was explained and analyzed in the supplemental environmental assessment. Further, a December 19, 2012, presentation on the exemption to the Council's Groundfish Committee also explained the threshold as including redfish discards. To clarify, the incorrect language would be replaced with ''Additionally, to help mitigate catches of sub-legal sized groundfish, total groundfish discards (including redfish discards), may not exceed 5 percent of all groundfish caught when directing on redfish with small-mesh nets.''

Because the language in the proposed rule is exactly opposite of what was intended, we are reopening the public comment period for 15 days to allow for additional public comment specifically on the correction to the proposed rule.

Dated: January 4, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–00345 Filed 1–7–13; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 7
Thursday, January 10, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1874]

Expansion of Foreign-Trade Zone 44; Morris County, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the New Jersey Department of State, grantee of Foreign-Trade Zone 44, submitted an application to the Board for authority to expand FTZ 44, to add a new site (Site 7) in Flanders, New Jersey, within and adjacent to the New York/Newark Customs and Border Protection port of entry (FTZ Docket 83–2011, filed 12/20/11);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 80885, 12/27/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 44 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 20th day of December 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–00348 Filed 1–9–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–811]

Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that xanthan gum from Austria is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is April 1, 2011, through March 31, 2012. The estimated weighted-average dumping margin of sales at LTFV is shown in the ''Preliminary Determination'' section of this notice. The final determination will be issued 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* January 10, 2013.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Karine Gziryan AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4406 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The scope of this investigation covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this investigation regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-DGlucuronic acid-(1,2) - a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of this investigation is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772 of the Act. Normal value (''NV'') has been calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation: Xanthan Gum from Austria,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this determination and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *https://*

iaaccess.trade.gov, and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/Manufacturer	Weighted-average dumping margin (percent)
Jungbunzlauer Austria AG	17.18
All Others	17.18

The ''All Others'' rate is based on the weighted-average dumping margin calculated for Jungbunzlauer Austria AG, the only company for which the Department calculated a rate.[1]

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[2] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce. All documents must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[3] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[4]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of xanthan gum from Austria as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct CBP to require a cash deposit [5] equal to the weighted-average amount by which the NV exceeds constructed export price, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: January 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope of the Investigation
2. Targeted Dumping Allegation
3. Targeted Dumping Test
4. Fair Value Comparisons
5. Product Comparisons
6. Date of Sale
7. Constructed Export Price
8. Normal Value
   a. Home Market Viability
   b. Level of Trade
   c. Cost of Production Analysis
   d. Calculation of COP
   e. Test of Comparison Market Sales Prices
   f. Results of COP Test
9. Affiliation
10. Currency Conversion
11. Verification

[FR Doc. 2013–00350 Filed 1–9–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* section 735(c)(5)(A) of the Act.

[2] *See* 19 CFR 351.309.

[3] *See* 19 CFR 351.310(c).

[4] *See* also 19 CFR 351.210(e).

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') preliminarily determines that xanthan gum from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. The final determination will be issued 135 days after publication of this preliminary determination in the **Federal Register.**

DATES: *Effective Date:* January 10, 2013.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Erin Kearney, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone:

(202) 482–0182 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The scope of this investigation covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this investigation regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris.* The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-DGlucuronic acid-(1,2)-a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of this investigation is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Methodology

The Department has conducted this antidumping duty investigation in accordance with section 731 of the Act. Export prices and constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, the respondents' factors of production (''FOPs'') have been valued using data from Thailand, the primary surrogate country, which is economically comparable to the PRC and is a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (''Preliminary Decision Memorandum'') and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Producer	Weighted average dumping margin
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd.	Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd.	21.69
Deosen Biochemical Ltd	Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd	127.65
A.H.A. International Co., Ltd	Shandong Fufeng Fermentation Co., Ltd	74.67
A.H.A. International Co., Ltd	Deosen Biochemical Ltd	74.67
CP Kelco (Shandong) Biological Company Limited	CP Kelco (Shandong) Biological Company Limited	74.67
Hebei Xinhe Biochemical Co. Ltd	Hebei Xinhe Biochemical Co. Ltd	74.67
Shanghai Smart Chemicals Co. Ltd	Deosen Biochemical Ltd	74.67
PRC-Wide Entity*		154.07

* The PRC-wide entity includes Shandong Yi Lian Cosmetics Co., Ltd., Shanghai Echem Fine Chemicals Co., Ltd., Sinotrans Xiamen Logistics Co., Ltd., and Zibo Cargill HuangHelong Bioengineering Co., Ltd.

Disclosure and Public Comment

The Department will disclose calculations performed for this preliminary determination to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[1] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[2] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

[1] *See* 19 CFR 351.309.

[2] *See* 19 CFR 351.310(c).

Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

For the final determination in this investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.[3] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information.[4] Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of xanthan gum from the PRC, as described in the ''Scope of the Investigation'' section, entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[5] equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) The separate-rate weighted-average dumping margin for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate-rate weighted-average dumping margin above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These cash deposit instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of xanthan gum, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2013–00349 Filed 1–9–13; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* 19 CFR 351.301(c)(3)(i).

[4] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC397

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of EFP applications; request for comments.

SUMMARY: NMFS announces the receipt of exempted fishing permit (EFP) applications for 2013 and 2014, and is considering issuance of EFPs for vessels participating in the EFP fisheries. The EFPs are necessary to allow activities that are otherwise prohibited by Federal regulations. The EFPs would be effective no earlier than February 11, 2013, and would expire no later than December 31, 2014, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

DATES: Comments must be received no later than 5 p.m., local time on February 11, 2013.

ADDRESSES: You may submit comments, identified by RIN 0648–XC397, by any one of the following methods:

- *Email: EFPs.2013@noaa.gov.*
- *Fax:* 206–526–6736, Attn: Gretchen Hanshew.
- *Mail:* William W. Stelle, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

FOR FURTHER INFORMATION CONTACT: To view copies of the EFP applications,

visit the Pacific Council Web site at *www.pcouncil.org* and browse the June 2012 Briefing Book; or contact Gretchen Hanshew (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736.

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745, which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited. At the June 2012 Pacific Fishery Management Council (Council) meeting in San Mateo, CA, the Council considered applications for three EFPs from: (1) Steven Fosmark; (2) the San Francisco Community Fishing Association and Dan Platt; and (3) the Central Coast Sustainable Groundfish Association and their collaborators. An opportunity for public testimony was provided during the Council meeting. For more details on these EFP applications and to view copies of the applications, see the Pacific Council's Web site at *www.pcouncil.org* and browse the June 2012 Briefing Book. The Council recommended that NMFS consider issuing the following EFPs, and that those EFPs be issued for 2 years. The 2-year duration is intended coincide with the 2013–2014 biennial harvest specifications and management measures process. Therefore, to reduce the administrative burden of issuing annual EFPs during the 2-year management cycle, NMFS is considering issuing the EFPs described below for a 2-year period. The EFPs issued for this 2-year period would expire no later than December 31, 2014, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

Commercial Chilipepper EFP

Steven Fosmark submitted an application for a 2-year EFP. The primary purpose of the EFP is to test if a specific longline gear configuration can be used in the commercial fishery to target underutilized chilipepper rockfish, while keeping bycatch of overfished species low.

Commercial Yellowtail EFP

The San Francisco Community Fishing Association and Dan Platt submitted an application for a 2-year EFP. The primary purpose of the EFP is to test a commercial hook and line gear to target underutilized yellowtail rockfish, while keeping bycatch of overfished species low.

Collaborative Fishing Survey EFP

The Central Coast Sustainable Groundfish Association submitted a proposal for a 2-year EFP, along with their collaborators: The Nature Conservancy; Environmental Defense Fund; various local industry research partners; and various academic scientific advisors and partners. The primary purpose of the EFP is to ground-truth estimates of spatial distribution of overfished species within parts of the rockfish conservation area, an area closed to groundfish fishing to protect overfished species, in order to see if there are areas that may be fished with low impacts to overfished species.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 7, 2013.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–00355 Filed 1–9–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC393

Nominations to the Marine Fisheries Advisory Committee

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: Nominations are being sought for an appointment by the Secretary of Commerce to fill one vacancy on the Marine Fisheries Advisory Committee (MAFAC or Committee) beginning in the spring of 2013. MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the NMFS. NMFS seeks to restore the geographic balance of the Committee created by recent vacancies and encourages candidates from the Hawaii region to apply, although nominations from all interested and qualified parties will be accepted. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two annual meetings. Individuals serve for a term of three years for no more than two consecutive terms if re-appointed.

DATES: Nominations must be postmarked or have an email date stamp on or before February 11, 2013.

ADDRESSES: Nominations should be sent to Dr. Mark Holliday, Executive Director, MAFAC, Office of Policy, NMFS F–14451, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 427–8004; email: *Mark.Holliday@noaa.gov.*

SUPPLEMENTARY INFORMATION: The establishment of MAFAC was approved by the Secretary on December 28, 1970, and subsequently chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2, on February 17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Committee Chairperson. No less that 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified, diverse individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups, and other living marine resource interest groups from a balance of U.S. geographical regions, including the Western Pacific and Caribbean.

A MAFAC member cannot be a Federal employee, a member of a Regional Fishery Management Council, a registered Federal lobbyist, or a State employee. The selected candidate must pass a security check and submit a financial disclosure form. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each nomination submission should include the nominee's name, a cover letter describing the nominee's qualifications and interest in serving on the Committee, curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, telephone number, fax number, and email address (if available).

Nominations should be sent to (see **ADDRESSES**) and must be received by February 11, 2013. The full text of the Committee Charter and its current membership can be viewed at the

NMFS' web page at *www.nmfs.noaa.gov/mafac.htm.*

Dated: January 4, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–00346 Filed 1–9–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2012–0055]

Extension of the Extended Missing Parts Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) implemented a pilot program (Extended Missing Parts Pilot Program) in which an applicant, under certain conditions, can request a twelve-month time period to pay the search fee, the examination fee, any excess claim fees, and the surcharge (for the late submission of the search fee and the examination fee) in a nonprovisional application. The Extended Missing Parts Pilot Program benefits applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program benefits the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2013, to better gauge whether the Extended Missing Parts Program offers sufficient benefits to the patent community for it to be made permanent.

DATES: *Duration:* The Extended Missing Parts Pilot Program will run through December 31, 2013. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed before December 31, 2013. The USPTO may further extend the pilot program (with or without modifications) depending on the feedback received and the continued effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov*.

SUPPLEMENTARY INFORMATION: The USPTO implemented a change to missing parts practice in certain nonprovisional applications as a pilot program (*i.e.,* Extended Missing Parts Pilot Program) after considering written comments from the public. *See Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44 (Jan. 4, 2011). The USPTO extended the Extended Missing Parts Pilot Program until December 31, 2012. *See Extension of the Extended Missing Parts Pilot Program,* 76 FR 78246 (Dec. 16, 2011), 1374 *Off. Gaz. Pat. Office* 113 (Jan. 10, 2012).

The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2013. The USPTO may further extend the Extended Missing Parts Pilot Program, or may discontinue the pilot program after December 31, 2013, depending on the results of the program. The requirements of the program are reiterated below. Applicants are strongly cautioned to review the pilot program requirements before making a request to participate in the Extended Missing Parts Pilot Program.

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within twelve months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement.

I. *Requirements:* In order for an applicant to be provided a twelve-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) Applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/AIA/421 titled ''Certification and Request for Extended Missing Parts Pilot Program;'' (2) the application must be an original (i.e. not a Reissue) nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous twelve months; the specific reference to the provisional application must be in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(5)); and (4) applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, applicant will need to satisfy filing date requirements and publication requirements. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of eighteen months from the earliest filing date to which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) the executed inventor's oath or declaration in compliance with 37 CFR 1.63 or an application data sheet containing the information specified in 37 CFR 1.63(b); (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any compact disc requirements to be satisfied, and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, applicant will need to satisfy the publication requirements within a two-month extendable time period.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/AIA/421. For utility patent

applications, applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of ''Certification and Request for Missing Parts Pilot'' for the certification and request on the EFS-Web screen. Form PTO/AIA/421 is available on the USPTO Web site at *http://www.uspto.gov/forms/aia0421.pdf*. Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/ebc/index.jsp*.

The utility application including the certification and request to participate in the pilot program may also be filed by mail (*e.g.,* by ''Express Mail'' in accordance with 37 CFR 1.10) or hand-carried to the USPTO. However, applicants are advised that, effective November 15, 2011, as provided in the Leahy-Smith America Invents Act, a new additional fee of $400.00 for a non-small entity ($200.00 for a small entity) is due for any nonprovisional utility patent application that is not filed by EFS-Web. *See* Public Law. 112–29, § 10(h), 125 Stat. 283, 319 (2011). This non-electronic filing fee is due on filing of the utility application or within the two-month (extendable) time period to reply to the Notice to File Missing Parts of Nonprovisional Application. Applicants will not be given the twelve-month time period to pay the non-electronic filing fee. Therefore, utility applicants are strongly encouraged to file their utility applications via EFS-Web to avoid this additional fee.

For plant patent applications, applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. *See Legal Framework for Electronic Filing System Web* (EFS-Web), 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

II. *Processing of Requests:* If applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send applicant a Notice to File Missing Parts of Nonprovisional Application that sets a twelve-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The twelve-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, see *Electronic Office Action,* 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and *http://www.uspto.gov/patents/process/status/e-Office_Action.jsp*. After an applicant files a timely reply to the Notice to File Missing Parts within the twelve-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

For a detailed discussion regarding treatment of applications that are not in condition for publication, processing of improper requests to participate in the program, and treatment of authorizations to charge fees, see *Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76403–04 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 47–49 (Jan. 4, 2011).

III. *Important Reminders:* Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112(a) which is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In order to be accorded a filing date, a nonprovisional application must include a specification concluding with at least one claim as prescribed by 35 U.S.C. 112 and a drawing as prescribed by 35 U.S.C. 113. *See* 35 U.S.C. 111(a). While only one claim is required in a nonprovisional application for filing date purposes and applicant may file an amendment adding additional claims later during prosecution, applicant should consider the benefits of submitting a complete set of claims on filing of the nonprovisional application. This would reduce the likelihood that any claims added later during prosecution might be found to contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

For additional reminders, see *Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76405 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 50 (Jan. 4, 2011).

Dated: January 3, 2013.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2013–00336 Filed 1–9–13; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, January 16, 2013, 10:00 a.m.–12:00 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matters To Be Considered

Decisional Matters

1. Section 1110 Certificated of Compliance—Notice of Proposed Rulemaking;

2. Fiscal Year 2013 Operating Plan

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product

Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 8, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–00420 Filed 1–8–13; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–1]

Notice of Telephonic Prehearing Conference

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Notice of telephonic prehearing conference for the case: In the Matter of BABY MATTERS LLC, CPSC Docket No.13–1.

DATES: January 28, 2013, 11:00 a.m. Eastern.

ADDRESSES: Members of the public are welcome to attend the prehearing conference to be held at the U.S. Customs House, 40 S. Gay Street, 4th Floor, Room 403 (U.S. Coast Guard Administrative Law Judge Courtroom), Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Regina Maye, Paralegal Specialist, U.S. Coast Guard ALJ Program, (212) 825–1230.

SUPPLEMENTARY INFORMATION: Any or all of the following shall be considered during the prehearing conference:

(1) Petitions for leave to intervene;

(2) Motions, including motions for consolidation of proceedings and for certification of class actions;

(3) Identification, simplification and clarification of the issues;

(4) Necessity or desirability of amending the pleadings;

(5) Stipulations and admissions of fact and of the content and authenticity of documents;

(6) Oppositions to notices of depositions;

(7) Motions for protective orders to limit or modify discovery;

(8) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(9) Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;

(10) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product safety rules;

(11) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;

(12) Consideration of offers of settlement;

(13) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties; and

(14) Such other matters as may aid in the efficient presentation or disposition of the proceedings.

Telephonic conferencing arrangements for the parties will be made by the court. Mary Murphy, Esq. and Kelly Moore, Esq., Counsel for the U.S. Consumer Product Safety Commission, and Raymond G. Mullady, Jr. and Adrien C. Pickard of BLANK ROME, LLP, Counsel for BABY MATTERS LLC shall be provided with a phone number and passcode in a separate notice of pre-hearing conference so they may participate telephonically if they so choose.

Authority: Consumer Product Safety Act, 15 U.S.C. 2064.

Dated: January 4, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–00312 Filed 1–9–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences; Quarterly Meeting Notice

AGENCY: Uniformed Services University of the Health Sciences (USU), Department of Defense.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES: Tuesday, February 5, 2013, from 8:00 a.m. to 11:30 a.m. (Open Session); 11:30 a.m. to 12:00 p.m. (Closed Session).

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Mr. Joshua Girton, Alternate Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3028. Mr. Girton can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held November 9, 2012; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine and Graduate School of Nursing; and recommendations regarding the awarding of master's and doctoral degrees in the biomedical sciences and public health. The Board will also receive reports from the President, USU and the Executive Director of the Center for Deployment Psychology. All of these actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Mr. Joshua Girton at the address and phone number previously noted. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Alternate Designated Federal Officer at the address listed in **FOR FURTHER INFORMATION CONTACT**. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Alternate Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally

present their issues during the February 2013 meeting or at a future meeting.

Dated: January 7, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–00343 Filed 1–9–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: January 31, 2013—9:00 a.m. to 6:00 p.m.

ADDRESSES: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue SW.; Washington, DC 20585–1290; Telephone: (301) 903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To complete the charge given to the Committee in the letter from the Director, Office of Science, dated April 13, 2012, to the FESAC Chair asking an assessment by FESAC of priorities among and within the elements of the magnetic fusion energy science program.

Tentative Agenda:

- FES Perspectives, including Briefing on the new Facilities Prioritization Charge.
- Briefing on the final report from the Subcommittee on Magnetic Fusion Energy Program Priorities.
- Presentation on the EU Pathway/DEMO Studies.
- Discussions of the Report from the Subcommittee on MFE Program Priorities.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Dr. Ed Synakowski at 301–903–8584 (fax) or *Ed.synakowski@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 45 days on the Fusion Energy Sciences Advisory Committee Web site at: *http://www.science.doe.gov/ofes/fesac.shtml.*

Issued at Washington, DC, on January 4, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–00330 Filed 1–9–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice sets forth the schedule and summary agenda for a teleconference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App 2. The purpose of this teleconference call is to discuss PCAST's Climate and Energy letter report.

DATES: Thursday, January 24, 2013 from 5:00 p.m. to 5:30 p.m. (EST). To receive the call-in information, attendees should register for the conference call on the PCAST Web site at: *http://www.whitehouse.gov/ostp/pcast* no later than 12:00 p.m. (EST) on Wednesday, January 16, 2013.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* Questions about the teleconference call should be directed to Dr. Amber Hartman Scholz, PCAST Acting Executive Director, by email at: *ascholz@ostp.eop.gov,* or by telephone: (202) 456–4444.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a teleconference call in open session on January 17, 2013 from 5:00 p.m. to 5:30 p.m.

During the conference call, PCAST will discuss its Climate and Energy letter report. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 17, 2013 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at: *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. (EST) on January 16, 2013. Phone or email reservations to be considered for the public speaker list will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written

comments with the committee as described below.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST no later than 12:00 p.m. (EST) on January 16, 2013, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Scholz at least five business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on January 4, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–00329 Filed 1–9–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9769–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; extension of public comment period.

SUMMARY: On December 7, 2012, in accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), the EPA published a notice in the **Federal Register** of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1:08–cv–00424 RWR (D. DC). Sierra Club filed a complaint alleging that the EPA failed to meet its obligations under section 112(e)(1)(E) of the CAA to promulgate emission standards for hazardous air pollutant emissions from brick and structural clay products manufacturing facilities and clay ceramics manufacturing facilities located at major sources by November 15, 2000. The proposed consent decree establishes deadlines for the EPA's proposed and final actions for meeting these obligations. This notice extends the comment period on the proposed consent decree until January 14, 2013.

DATES: Written comments on the proposed consent decree must be received by January 14, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0905, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Scott Jordan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–7508; fax number (202) 564–5603; email address: *jordan.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel EPA to promulgate emission standards for hazardous air pollutant emissions from brick and structural clay products manufacturing facilities and clay ceramics manufacturing facilities located at major sources under section 112(e)(1)(E) of the CAA. Under the proposed consent decree, EPA shall no later than August 30, 2013, sign a notice of proposed rulemaking to set national emission standards for hazardous air pollutants (''NESHAP'') pursuant to section 112(d) of the CAA, 42 U.S.C. 7412(d), for brick and structural clay products manufacturing facilities and clay ceramics manufacturing facilities located at major sources. In addition, under the proposed consent decree, EPA shall no later than July 31, 2014, sign a notice of final rulemaking to set NESHAP for the source categories covered by the proposed rule.

The proposed consent decree further requires that, within 10 business days of signing a proposed or final rule, EPA shall deliver a notice of such action to the Office of the Federal Register for publication and that once EPA fulfills its obligations under the decree it may move to have the decree terminated.

On December 7, 2012, the EPA published a notice of the above-described proposed consent decree and invited written comments on the proposed decree from persons who were not named as parties or intervenors to the litigation in question. 77 FR 73029. This notice extends the public comment period on the proposed consent decree until January 14, 2013.

Please see the notice published at 77 FR 73029 (Dec. 7, 2012) for information on how to obtain a copy of the proposed consent decree and how, and to whom, to submit comments concerning the proposed decree.

Dated: January 1, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–00360 Filed 1–9–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12–239; DA 12–1865]

Auction of FM Broadcast Construction Permits Rescheduled for April 23, 2013; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 94

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits. This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in Auction 94.

DATES: Applications to participate in Auction 94 must be filed prior to 6:00 p.m. Eastern Time (ET) on February 6, 2013. Bidding for construction permits in Auction 94 is scheduled to begin on April 23, 2013.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Howard Davenport at (202) 418–0660; for general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. *Media Bureau, Audio*

Division: For FM service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 94 Procedures Public Notice* released on November 21, 2012. The complete text of the *Auction 94 Procedures Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 94 Procedures Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–1865. The *Auction 94 Procedures Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/94/,* or by using the search function for AU Docket No. 12–1865 on the Commission's Electronic Comment Filing System (ECFS) web page at *http://www.fcc.gov/cgb/ecfs/.*

I. General Information

A. Introduction

1. On September 11, 2012, the Wireless Telecommunications and Media Bureaus (the Bureaus) released a public notice seeking comment on competitive bidding procedures to be used in Auction 94. Six parties submitted seven comments in response to the *Auction 94 Comment Public Notice,* 77 FR 60690, October 4, 2012.

2. On November 21, 2012, The Bureaus released a public notice that established the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits and announced a revised auction schedule. This auction, which is designated as Auction 94, is now scheduled to start on April 23, 2013. Construction Permits in Auction 94

3. Auction 94 will offer 112 construction permits in the FM broadcast service. The construction permits to be auctioned, which are listed in Attachment A of the *Auction 94 Procedures Public Notice,* are for 112 new FM allotments, including 25 construction permits that were offered but not sold or were defaulted upon in prior auctions. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotment.

4. Attachment A to *the Auction 94 Procedures Public Notice* reflects changes to the list of construction permits that were proposed for this auction. The Bureaus have removed five construction permits from the list of construction permits that were proposed for inclusion in this auction. The *Auction 94 Comment Public Notice* explains the Bureaus' rationale for removing certain permits and not offering those five permits in Auction 94.

5. Applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction 94 Procedures Public Notice.* When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the permit.

B. Rules and Disclaimers

i. Relevant Authority

6. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's FM broadcast service rules contained in 47 CFR 73.201–73.333 and 73.1001–73.5009. Prospective bidders must also be familiar with the broadcast auctions and competitive bidding rules contained in 47 CFR 1.2101–1.2112 and 73.5000–73.5009. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 94 Procedures Public Notice* and other public notices and orders referenced in that Public Notice. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibited Communications and Compliance With Antitrust Laws

7. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) of the Commission's rules prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

8. The prohibition on certain communications in 47 CFR 1.215(c) will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For the FM service, the market designation is the particular vacant FM allotment (e.g., Harrison, Michigan, Channel 280A, MM–FM664A). In Auction 94, this rule would apply to applicants designating any of the same FM allotments on the short-form application.

9. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines ''applicant'' as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For

example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

10. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies.

11. 47 CFR 1.2105(c) permits a non-controlling interest holders to obtain interests in more than one competing applicant without violating the rule provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

12. Auction 94 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

13. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

14. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

15. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including communications regarding capital calls or requests for additional funds in support of bids or bidding strategies. An applicant also may not use the Commission's bidding system to disclose its bidding strategy. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. Similarly, an applicant's public statement of intent not to participate in Auction 94 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate 47 CFR 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

16. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

17. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

18. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

e. Section 1.2105(c) Certification

19. By electronically submitting a short-form application, each applicant in Auction 94 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

20. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

21. In addition, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in the pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

22. 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive

bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant become aware of the need for amendment.

g. Procedure for Reporting Prohibited Communications

23. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

24. 47 CFR1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 94 Procedures Public Notice.* For Auction 94, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to the following email address: *auction94@fcc.gov*. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

25. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459 of the Commission's rules. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders Must Disclose Terms of Agreements

26. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

27. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment D of the *Auction 94 Procedures Public Notice.* These documents are available on the Commission's auction web page

j. Antitrust Laws

28. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

29. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

30. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

31. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder is strongly encouraged to review all underlying Commission orders, such as the specific order amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. An order adopted in an FM allotment rulemaking proceeding may include information unique to the allotment such as site restrictions or expense reimbursement requirements. Each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 94 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and familiarize itself with the Commission's rules regarding the National Environmental Policy Act at 47 CFR Chapter 1, Part 1, Subpart I.

32. Each applicant should conduct its own research prior to Auction 94 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect its decision to participate in the auction. Each participant in Auction 94 should continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 94 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

33. Pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission—including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections,

and applications for review—may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 94. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

34. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 94. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

35. Applicants may research the licensing database for the Media Bureau in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Consolidated Data Base System (CDBS) and may be researched on the Internet from *http://www.fcc.gov/mb.*

36. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of Integrated Spectrum Auction System

37. Bidders will be able to participate in Auction 94 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

38. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules, 47 CFR 1.1301–1.1319, for each such facility. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Bidding Methodology

39. The bidding methodology for Auction 94 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

ii. Pre-Auction Dates and Deadlines

40. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)	January 28, 2013.
Short-Form Application (FCC Form 175) Filing Window Opens	January 28, 2013; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	February 6, 2013; prior to 6:00 p.m. ET.
Upfront Payments (via wire transfer)	March 18, 2013; 6:00 p.m. ET.
Mock Auction	April 19, 2013.
Auction Begins	April 23, 2013.

iii. Requirements for Participation

41. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on February 6, 2013, following the electronic filing procedures set forth in Attachment B to the *Auction 94 Procedures Public Notice;* (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on March 18, 2013, following the procedures and instructions set forth in Attachment C to the *Auction 94 Procedures Public Notice;* and (3) Comply with all provisions outlined in the *Auctions 94 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

42. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in

Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that it has the legal, technical and financial resources to participate in the auction and to construct and operate an FM station if it becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment. In the second phase of the process, each winning bidder must file a more comprehensive long-form application.

43. Every entity and individual seeking a construction permit available in Auction 94 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on February 6, 2013, following the procedures prescribed in Attachment B to the *Auction 94 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

44. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions set forth in Attachment B to the *Auction 94 Procedures Public Notice* and should consult the Commission's rules to ensure that all the information required is included within their short-form application.

45. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

46. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Permit Selection

47. An applicant must select the construction permits on which it wants to bid from the ''Eligible Permits'' list on its short-form application. To assist in identifying construction permits of interest that will be available in Auction 94, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the ''Eligible Permits'' list. Selections for one or more of the filter criteria can be made and the system will produce a list of construction permits satisfying the specified criteria. Any or all of the construction permits in the filtered results may be selected. Applicants will also be able to select construction permits from one set of filtered results and then filter on different criteria to select additional construction permits.

48. Applicants interested in participating in Auction 94 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Construction permit selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on construction permits that were not selected on the applicant's short-form application.

C. New Entrant Bidding Credit

49. The interests of the applicant and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 94, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline. Each prospective bidder is reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

50. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) Any owner of 5 percent or more of the voting stock of a corporate bidder; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated.

51. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

52. Applicants are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order,* the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

53. In the *Diversity Order,* 73 FR 28400, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities as set forth in 47 CFR 73.3555 Note 2(i). Consistent with a United States Court of Appeals decision issued in July 2011, the relaxed EDP rule for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 94.

54. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in section 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in section 73.5008(b).

D. Application Requirements

55. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

56. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, not any applicant-specified preferred site coordinates.

57. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

E. Ownership Disclosure Requirements

58. For purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112 . Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

59. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using the FCC Auction System), will automatically be entered into their short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

60. Current defaulters or delinquents are not eligible to participate in Auction 94, but former defaulters or delinquents can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a ''current defaulter'' or a ''current delinquent'' when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a ''former defaulter'' or a ''former delinquent'' when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

61. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including

monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

62. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

63. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the ''red light rule,'' that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules ''are not affected'' by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

64. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current ''red light'' status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

65. Moreover, prospective applicants in Auction 94 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

G. Optional Applicant Status Identification

66. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions.

H. Noncommercial Educational Status Election

67. Applications for noncommercial educational (NCE) FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction 94 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing. For this reason, each prospective applicant in this auction should consider carefully if they wish to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

I. Minor Modifications to Short-Form Applications

68. After the deadline for filing initial applications, an Auction 94 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant—resulting from a merger, for example, will be considered a major modification, and the application will consequently be dismissed. If an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline.

69. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.

70. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational. Any letter describing changes to an applicant's short-form application must be submitted by email to *auction94@fcc.gov*. Any application amendment and related statements of fact must be certified by (1) The applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

71. Applicants must not submit application-specific material through the Commission's Electronic Comment

Filing System, which was used for submitting comments regarding Auction 94.

J. Maintaining Current Information in Short-Form Applications

72. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a ''major amendment,'' as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by email to *auction94@fcc.gov*. This email must include a subject or caption referring to Auction 94 and the name of the applicant.

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available January 28, 2013

73. On Monday, January 28, 2013, an educational auction tutorial will be available on the Auction 94 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction. Once posted, this tutorial will remain accessible for reference prior to Auction 94.

B. Short-Form Applications—Due Prior to 6:00 p.m. ET on February 6, 2013

74. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to the *Auction 94 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on February 6, 2013. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

75. Applications may generally be filed at any time beginning at noon ET on January 28, 2013, until the filing window closes at 6:00 p.m. ET on February 6, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on February 6, 2013.

76. An applicant must always click on the SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B of the *Auction 94 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

77. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) Those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

78. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

79. After the application filing deadline on February 6, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).

80. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to *auction94@fcc.gov.*

D. Upfront Payments—Due March 18, 2013

81. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 94 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on March 18, 2013.

i. Making Upfront Payments by Wire Transfer

82. Wire transfer payments must be received before 6:00 p.m. ET on March 18, 2013. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, write Wire Transfer—

Auction Payment for Auction 94. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 94 before the deadline.

83. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.

84. All payments must be in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 94 go to a lockbox number different from the lockbox used in previous FCC auctions. Failure to deliver a sufficient upfront payment as instructed by the March 18, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

85. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the *Auction 94 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

86. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

87. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of the *Auction 94 Procedures Public Notice*.

88. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

89. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

90. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Specific instructions were provided in the *Auction 94 Procedures Public Notice* for the submission of wire transfer instructions by fax.

F. Auction Registration

91. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

92. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the ''Integrated Spectrum Auction System (ISAS) Bidder's Guide,'' and the Auction Bidder Line phone number.

93. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, April 17, 2013, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

94. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

G. Remote Electronic Bidding

95. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—

electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the ''Integrated Spectrum Auction System (ISAS) Bidder's Guide'' are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 94.

H. Mock Auction—April 19, 2013

96. All qualified bidders will be eligible to participate in a mock auction on Friday, April 19, 2013. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

IV. Auction

97. The first round of bidding for Auction 94 will begin on Tuesday, April 23, 2013. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

98. In Auction 94, all construction permits will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. The Bureaus received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

99. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 94. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 94 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility.

100. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. The Bureaus proposed a 100 percent activity requirement.

101. The Bureaus declined one commenter's suggestion that they should require an upfront payment covering of all the permits selected by an applicant in its FCC Form 175. Allowing each applicant to submit an upfront payment that covers the maximum number of bidding units on which it may wish to be active in any given round affords bidders the flexibility to pursue backup strategies—not unlike having an activity requirement below 100%.

102. The Bureaus also chose not to adopt their proposal to have a 100% activity requirement in response to concerns raised by a commenter. Instead, the Bureaus adopt two activity requirements: an 80% requirement for the beginning of the auction and a 95% requirement that will be used later in the auction. The Bureaus will implement these requirements using two ''auction stages.''

103. When the Bureaus move the auction from Stage One to Stage Two, they will first alert bidders by announcement in the bidding system. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

iii. Activity Rule Waivers

104. The Bureaus decided to provide bidders in Auction 94 with three activity rule waivers. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

105. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

106. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

107. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the ''apply waiver'' function in the FCC Auction System) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot

unsubmit the waiver even if the round has not yet ended.

iv. Auction Stopping Rules

108. For Auction 94, the Bureaus will employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

109. The Bureaus also sought comment on alternative versions of the simultaneous stopping rule for Auction 94. Under Option1, the auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

110. Under Option 2, the auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an ''FCC-held'' construction permit) would not keep the auction open under this modified stopping rule.

111. Under Option 3, the auction would close using a modified version of the simultaneous stopping rule that combines 1 and 2.

112. Under Option 4, the auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

113. Under Option 5, the auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

114. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, The Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus received no comment on these proposals and adopt them for Auction 94.

v. Auction Delay, Suspension, or Cancellation

115. The Bureaus by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.

B. Bidding Procedures

i. Round Structure

116. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

117. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

118. The Bureaus did not propose to establish reserve prices for the construction permits in Auction 94. The Bureaus did establish minimum opening bids for each construction permit, reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process. The Bureaus sought comment on the proposed minimum opening bids.

119. In response to specific concerns raised by commenters concerning the Bureaus' proposed minimum opening bid amounts for particular permits, the Bureaus adopted a minimum opening bid for MM–FM1057–A, at Oak Harbor, Washington, of $15,000, a minimum opening bid for MM–FM1058–A, at Sedro-Woolley, Washington, of $5,000, and a minimum opening bid for MM–FM1059–A, at Sequim, Washington, of $1,500.

120. For the rest of the construction permits, the Bureaus adopted the minimum opening bid amounts proposed in the *Auction 94 Comment Public Notice.* The specific minimum opening bid amounts for all the construction permits available in Auction 94 are again specified in Attachment A to the *Auction 94 Procedures Public Notice.*

iii. Bid Amounts

121. In each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

122. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results

of these calculations using the standard rounding procedures for auctions.

123. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. The Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. If the Bureaus exercise this discretion, the Bureaus will alert bidders by an announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

124. At the end of each bidding round, a ''provisionally winning bid'' will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

125. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). Specifically, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

126. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 94. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

127. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

128. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (''PIN'') created by the bidder. Bidders are strongly encouraged to print a ''round summary'' for each round after they have completed all of their activity for that round.

129. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an ''upload'' function that allows text files containing bid information to be uploaded.

130. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined.

131. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

vi. Bid Removal and Bid Withdrawal

132. In Auction 94, each bidder with the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the ''remove bids'' function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

133. The Bureaus will prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

vii. Round Results

134. Reports reflecting bidders' identities for Auction 94 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

135. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

viii. Auction Announcements

136. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

137. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for

submitting down payments, final payments, and the long-form applications (FCC Forms 301).

A. Down Payments

138. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 94 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

139. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 301)

140. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 94. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

141. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 94 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for defaults in Auction 94 is Twenty percent of the applicable bid.

E. Refund of Remaining Upfront Payment Balance

142. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2013–00347 Filed 1–9–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Donald L. Patry Revocable Trust; Ellen M. Patry Revocable Trust, and Ellen Patry, trustee, all of Newton, Kansas; Corey Patry, Wichita, Kansas; Brandon Patry, and Katie Patry,* both of Valley Center, Kansas, as a group acting in concert, to retain voting shares of Whitewater Bancshares, Inc., and thereby indirectly retain voting shares of Bank of Whitewater, both in Whitewater, Kansas.

Board of Governors of the Federal Reserve System, January 7, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–00331 Filed 1–9–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–P–1189]

Canned Tuna Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) received an application for a temporary permit from Chicken of the Sea International (the applicant). We are announcing that we have issued a temporary permit to the applicant to market test products (designated as ''no drain canned tuna'' products) that deviate from the U.S. standard of identity for canned tuna. The purpose of the temporary permit is to market test the product throughout the United States. The permit will allow the applicant to measure consumer acceptance of the new product and assess the new product's commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the applicant introduces or causes the introduction of one or more of the test products into interstate commerce, but not later than April 10, 2013.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: We are giving notice that we have issued a temporary permit to Chicken of the Sea International, 9330 Scranton Rd., suite 500, San Diego, CA 92121–7706. We are issuing the temporary permit in accordance with 21 CFR 130.17, which addresses temporary permits for interstate shipment of experimental packs of food varying from the requirements of standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers limited interstate marketing tests of products identified as ''no drain canned tuna'' products. These test products deviate from the U.S. standard of identity for canned tuna (21 CFR 161.190, hereinafter ''the standard'') in that the test products are prepared by: (1) Adding such a small amount of liquid that the products will not contain a packing medium in accordance with the standard; (2) adding seasoning and flavoring ingredients (*i.e.,* lemon juice concentrate, lime oil, and chili paste) that are not permitted under the current standard; and (3) deviating from the fill requirements of the standard without including on the product label a general statement of substandard fill. The test products meet all the requirements of the standard with the exception of these three deviations. The purpose of this temporary permit is to market test the product throughout the United States. The permit will allow the applicant to measure customer acceptance of the new product and assess the new product's commercial feasibility.

This permit provides for the temporary marketing of a total 533,333 cases of 12 x 4 ounce cans (totaling 6.4 million cans), covering 1.6 million pounds (725,747 kg) of test products. The test products will be manufactured by: Thai Union Frozen Products Public Company PLC (located at 30/2 Sethakit 1 Rd., Tambon Tarsrai, Ampheur Muang, Samutsakon 74000, Thailand); Paul Paulet SAS (located at SA Zone Industrielle De Pouldavid, 29177 Dourrneinez, France); Pioneer Food Company (located at Pioneer Food Company Building, P.O. Box 4D, Fishing Harbour, Tema, Ghana); and Indian Ocean Tuna LTD (located at P.O Box 676, Fishing Port Victoria, Mahé, Seychelles). Chicken of the Sea International will distribute the test products throughout the United States. Under this temporary permit, the principal display panels of the test products must bear the phrase ''no drain canned tuna'' in addition to one of the following names: ''Solid Light Tuna,'' ''Solid White Albacore Tuna,'' ''Solid Light Tuna Thai Chili,'' and ''Solid Light Tuna Lemon Pepper.'' The information panels on the labels of the test products must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels of the test products as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the applicant introduces or causes the introduction of one or more of the test products into interstate commerce, but not later than April 10, 2013.

Dated: December 26, 2012.

Barbara Schneeman,

Director, Office of Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 2013–00293 Filed 1–9–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office at (301) 443–1984.

Information Collection Request Title: Telehealth Resource Center Performance Measurement Tool (OMB No. 0915–xxxx)—NEW.

Abstract: In order to ensure the best use of public funds and to meet GPRA requirements, the Office for the Advancement of Telehealth (OAT) in collaboration with Telehealth Resource Centers (TRCs) has developed a set of performance metrics to evaluate the technical assistance services provided by the TRCs. The TRC Performance Indicator Data Collection Tool contains the data elements that would need to be collected by TRCs in order to report on the performance metrics. This tool can be easily translated into a web-based data collection system (PIMS). Also, it will allow the TRCs to report to OAT around their projects' performance progress and will allow OAT to demonstrate to Congress the value added from the TRC Grant Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Telehealth Resource Center Performance Data Collection	10	76	760	0.07	53
Total	10	76	760	0.07	53

ADDRESSES: Submit your comments to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Deadline: Comments on this ICR should be received within 30 days of this notice.

Dated: December 28, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00292 Filed 1–9–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: January 31, 2013, 9:30 a.m.–12:30 p.m. Eastern Standard Time.

Place: Conference Call Format.

SUPPLEMENTARY INFORMATION:

Status: This conference call meeting will be open to the public.

Purpose: The purpose of this meeting is to identify the key challenges facing nursing workforce development to respond to the Affordable Care Act and health care system redesign, and to formulate policy recommendations for Congress and the Secretary to ensure the nursing workforce is ready to meet these challenges. The objectives of the meeting are to: (1) Articulate the key challenges facing nursing workforce development in meeting the health care needs of the nation; (2) develop goals and priorities for Council action to address these challenges; and (3) develop recommendations on the activities, initiatives, and partnerships that are critical to advancing 21st century interprofessional education and practice models needed to promote the health of the public. This meeting will form the basis for NACNEP's mandated Thirteenth Annual Report to the Secretary of Health and Human Services and Congress. The meeting will include a panel presentation and discussion focused around the purpose and objectives of this meeting.

Agenda: The Agenda will be available on the NACNEP Web site, noted below, one day prior to the meeting. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Further information regarding NACNEP including the roster of members, Reports to Congress, and minutes from previous meetings are available at the following Web site: *http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/index.html.*

Members of the public and interested parties may request to participate in the conference call by contacting the Committee Management Specialist, Jeanne Brown, to obtain information on the conference phone line. Access is by invitation only and will be granted on a first come, first served basis. Space is limited.

For additional information regarding NACNEP, please contact Jeanne Brown, Committee Management Specialist, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–61, 5600 Fishers Lane, Rockville, Maryland 20857; email *jbrown@hrsa.gov;* telephone (301) 443–5688.

Dated: January 4, 2013.

Bahar Niakan,

Director, Division of Policy Review and Coordination.

[FR Doc. 2013–00356 Filed 1–9–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Learning and Memory.

Date: January 31, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Alcohol and Drug Abuse.

Date: February 1, 2013.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurogenesis and Cell Fate Study Section.

Date: February 4–5, 2013.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin, St. Francis, 355 Powell Street, San Francisco, CA 94012.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group Drug Discovery and Molecular Pharmacology Study Section.

Date: February 7–8, 2013.

Time: 8:00 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: February 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group Cellular Mechanisms in Aging and Development Study Section.

Date: February 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC 20037.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 4, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00282 Filed 1–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to discuss updates on ASD research and services activities, discuss plans for the 2012 IACC Summary of Advances and plans for the update of the IACC Strategic Plan for ASD Research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: January 29, 2013.

Time: 10:00 a.m. to 5:00 p.m.* Eastern Time

* Approximate end time.

Agenda: To discuss updates on ASD research and services activities, discuss plans for the 2012 IACC Summary of Advances and plans for the update of the IACC Strategic Plan for ASD Research.

Place: The National Institutes of Health, Main Campus, William H. Natcher Conference Center, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Webcast Live: http://videocast.nih.gov/

Conference Call Access: Dial: 888–603–9709, Access code: 7857464.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. For more on registration please visit the IACC Web site at: *www.iacc.hhs.gov/events.*

Deadlines: Notification of intent to present oral comments: Thursday, January 24, 2013 by 5:00 p.m. ET. Submission of written/electronic statement for oral comments: Friday, January 25, 2013 by 5:00 p.m. ET. Submission of written comments: Thursday, January 24, 2013 by 5:00 p.m. ET

Access: Metro accessible—Medical Center Metro Station

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note

Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Thursday, January 24, 2013, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented by 5:00 p.m. ET on Friday, January 25, 2013. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5:00 p.m. ET on Thursday, January 24, 2013. The comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. All written statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *iacchelpdesk2012@gmail.com* or by phone at (301) 339–3840.

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended)

NIH has instituted stringent security procedures for entrance onto the NIH campus. All visitors must enter through the NIH Gateway Center. This center combines visitor parking, non-commercial vehicle inspection and visitor ID processing, all in one location. The NIH will process all visitors in vehicles or as pedestrians. You will be asked to submit to a vehicle or personal inspection and will be asked to state the purpose of your visit. Visitors over 15 years of age must provide a form of government-issued ID such as a driver's license or passport. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection.

When driving to NIH, plan some extra time to get through the security checkpoints. Be aware that visitor parking lots on the NIH campus can fill up quickly. The NIH campus is also accessible via the metro Red Line, Medical Center Station. The Natcher Conference Center is a 5-minute walk from the Medical Center Metro Station.

Additional NIH campus visitor information is available at: *http://www.nih.gov/about/visitor/index.htm*

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: January 3, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00280 Filed 1–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 4, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00281 Filed 1–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–01]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Rental Assistance Demonstration Research Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. The U.S. Department of the Housing and Urban Development (HUD) intends to make funding available from the FY 2012 Transformation Initiative for Research Grants related to the Rental Assistance Demonstration. This information collection is for applications for funding, and reporting requirements for funded applications.

DATES: *Comment Due Date:* February 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2577–XXXX) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Email: *OIRA_Submission_@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Transformation Initiative: Rental Assistance Demonstration Research Grant Program.

OMB Control Number: 2577–XXXX.

Description of the Need for the Information and Proposed Use: The U.S. Department of the Housing and Urban Development (HUD) intends to make funding available from the FY 2012 Transformation Initiative for Research Grants related to the Rental Assistance Demonstration. This information collection is for applications for funding, and reporting requirements for funded applications.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

Members of the Affected Public: Eligible applicants include nationally recognized and accredited institutions of higher education, non-profit foundations, think tanks, research consortia or policy institutes, and for-profit organizations located in the U.S.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	10	10	60	600
Quarterly Reports	2	8	6	48
Final Reports	2	2	2	4
Recordkeeping	2	2	4	8
Total	26	22	72	660

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 2, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–00297 Filed 1–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–03]

Notice of Proposed Information Collection for Public Comment: 2013 American Housing Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). The Department is soliciting public comments on the subject proposal.

The American Housing Survey (AHS) is a longitudinal survey that provides a periodic measure of the size and composition of the country's housing inventory. Like the previous surveys, the 2013 AHS will collect data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacancies. A supplemental sample of housing units will be selected for approximately 25 metropolitan areas. The supplemental sample will be combined with existing sample in these areas in order to produce metropolitan estimates.

DATES: *Comments Due Date:* February 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2577–0017) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Email: *OIRA__Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. email.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2013 American Housing Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The American Housing Survey (AHS) provides a periodic measure of the size and composition of the country's housing inventory. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

Like the previous surveys, the 2013 AHS will collect data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacancies. There are plans to collect additional data on people who had to temporarily move in with other households, neighborhood conditions, working from home, ability to travel via public transportation, bicycling, or walking, energy efficiency, and emergency preparedness. Questions about potential health and safety hazards and home modifications made to assist occupants living with disabilities that were added to the 2011 survey will not be included in the 2013 survey. A supplemental sample of housing units will be selected for approximately 31 metropolitan areas. The supplemental sample will be combined with existing sample in these areas in order to produce metropolitan estimates using the National data.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents	194,000.
Estimate Responses per Respondent.	1 every 2 years.
Time (minutes) per respondent.	45.
Total hours to respond	145,500.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 2, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–00295 Filed 1–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–02]

Notice of Proposed Information Collection for Public Comment: Neighborhood Stabilization Program Tracking Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. The information is being collected by telephone and on-site interviews to assess program design, implementation, inputs and outcomes at the local level. This is the second wave of interviews for the same study and has the same structure.

DATES: *Comment Due Date:* February 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2577–XXXX) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Email: *OIRA__Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. email.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Site Visit Protocols for Neighborhood Stabilization Program (NSP2) Evaluation; Second Round.

OMB Control Number: 2577–XXXX.

Description of the Need for the Information and Proposed Use: The U.S. Department of Housing and Urban Development (HUD) is conducting an important national study of the Neighborhood Stabilization Program (NSP), with a particular focus on the round of funding from the American Recovery and Reinvestment Act (ARRA), known as ''NSP2.'' This information collection will constitute the second round of site visits and interviews of NSP2 grantees, as well as collection of grantees' property-level data on NSP2 activities conducted. The information collected will be used to describe how program implementation occurred in practice, gather views of what program outcomes and impacts have occurred, and explore factors that contributed to program outcomes.

Agency Form Numbers:

Members of the Affected Public: A total of 29 NSP2 grantees (25 local and 4 national) and 50 partner agencies will be part of the study. Staff of these grantees will be asked to participate in interviews with HUD's contractor and to provide HUD's contractor with access to their records for tracking program activity. Local interviews will take approximately 2 hours per person and will be administered to approximately 4 staff per NSP2 grantee and 4 additional staff among partner agencies. Interviews with national grantees will be administered to approximately 2 staff per NSP2 grantee.

Property-level data will be compiled either by grantee representatives or by a HUD contractor. Approximately one-half of the 29 grantees (or 14 grantees) and 25 partner organizations will likely chose to report the required data themselves via the study's preformatted spreadsheet. HUD estimates that each spreadsheet will take one person about 1.5 working days (12 hours) to complete, on average.

For the remaining 15 grantees and 25 partner organizations, the data will be compiled by the research team with the support of local representatives. The majority of this effort will be conducted by the researcher. HUD estimates that it will take approximately two hours per grantee and partner organization to provide access to records during this time (e.g., pulling the appropriate files).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The following chart details the respondent burden on a quarterly and annual basis:

	Number of entities	Responses per entity	Hours per response	Total hours
Interviews: Local NSP grantees	25	4	2	200
Interviews: Local Partner agencies	50	4	2	400
Interviews: National NSP2 grantees	4	2	2	16
Providing Access to Records	40	1	2	80
Compiling Records	39	1	12	468

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 2, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–00296 Filed 1–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5410–N–03]

Federal Housing Administration (FHA) First Look Sales Method Under the Neighborhood Stabilization Program (NSP): Increased Discount on Sales Price for Certain Properties and Clarification of Effective Dates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On July 15, 2010, HUD published a **Federal Register** notice establishing the process by which eligible purchasers under the Neighborhood Stabilization Program (NSP) are provided a preference to acquire real-estate owned (REO) properties of FHA under the temporary Federal Housing Administration (FHA) First Look Sales Method. Under the First Look Sales Method, eligible NSP purchasers have the opportunity to purchase REO properties at a discount of 10 percent below their appraised value, less the cost of any applicable listing and sales commission. This notice announces an increase in the discount to 15 percent for properties that do not meet the applicable minimum property standards to be eligible for FHA mortgage insurance. Additionally, HUD has taken the opportunity afforded by this notice to clarify that the First Look Sales Method will be in effect until the conclusion of the NSP.

DATES: The FHA First Look Sales Method shall be in effect until the conclusion of the NSP.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2010, at 75 FR 41225, HUD published a **Federal Register** notice establishing the process by which certain governmental entities, nonprofit organizations, and subrecipients participating in the NSP (eligible NSP purchasers) are provided a preference to acquire REO properties under the temporary FHA First Look Sales Method. This temporary REO sales method furthers the goals of both NSP, to aid in the redevelopment of abandoned and foreclosed homes, and of HUD's REO sales program, to expand homeownership opportunities and strengthen communities. Through the FHA First Look Sales Method, HUD provides eligible NSP purchasers with a preference (a ''first look'') to acquire FHA REO properties that are available for purchase within NSP areas. Eligible NSP purchasers may acquire such REO properties with the assistance of NSP funds for any eligible uses under the NSP, including rental or homeownership. Interested persons should refer to the July 15, 2010, notice for additional details regarding the FHA First Look Sales Method.

II. This Notice—Increased Discount on Sales Price for Certain REO Properties Purchased Under the FHA First Look Sales Method

REO properties purchased through the FHA First Look Sales Method are sold at a discount of 10 percent below the appraised value, less any applicable costs, including commissions. The minimum discounted purchase price of a property is one percent off of the appraised property value; in no case may the discounted purchase price exceed 99 percent of the appraised property value. (*See,* Section II.F. of the July 15, 2010, notice, at 75 FR 41227). The ten percent discount has proved insufficient for REO properties that do not meet the minimum property standards to be eligible for FHA mortgage insurance because the property is in need of extensive repairs.[1] The necessary rehabilitation or flood insurance expenses, coupled with the lack of FHA financing, have the potential to make the costs of acquiring these properties prohibitive to otherwise eligible home purchasers. This lack of affordability impedes the goal of the FHA First Look Sales Method to aid in the revitalization of communities through expanded homeownership. To address this concern, HUD announces an increase in the discount to 15 percent for properties that do not meet the applicable FHA minimum property standards. As is currently true, the 15 percent discount shall be subject to any applicable costs, including commissions, but in no case will the total discounted amount be less than one percent off of the appraised property value. The discount for REO properties eligible for FHA mortgage insurance remains at 10 percent of the appraised value of the home.

In addition to the increase in the sales price discount, this notice clarifies that the First Look Sales Method will be in effect until the conclusion of the NSP. HUD's July 15, 2010, notice announced that the First Look Sales Method would be in effect until May 31, 2013. This date was based on the expected conclusion of the NSP, and was not intended to provide for conclusion of the First Look Sales Method prior to the close of the NSP.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for the FHA First Look Sales Method have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0589. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment for the FHA First Look Sales Method was made at the time of the July 15, 2010, **Federal Register** notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulation Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, and advance appointment to review the FONSI must be scheduled by calling the Regulations

[1] The FHA minimum property standards for existing dwellings are found in HUD Handbook 4905.1 REV 1, available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4905.1.*

Division at 202–708–3055 (this is not a toll-free number).

Dated: January 4, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–00357 Filed 1–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–PAGR–11895; PPNEPAGR00, PMP00UP05.YP0000]

Notice of Meetings for the Paterson Great Falls National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meetings.

SUMMARY: As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice for the 2013 schedule of meetings for the Advisory Committee to the Paterson Great Falls National Historical Park General Management Plan. The Paterson Great Falls National Historical Park (NHP) Federal Advisory Commission was authorized by Congress and signed by the President on March 30, 2009, (Pub. L. 111–11, Title VII, Subtitle A, Section 7001, Subsection e) ''to advise the Secretary in the development and implementation of the management plan.'' Agendas for these meetings will be provided on the Paterson Great Falls NHP Web site (*http://www.nps.gov/pagr/parkmgmt/federal-advisory-commission.htm*).

DATES: The Commission will meet on the following dates in 2013:

- Thursday, January 31, 2013, 2:00–5:00 p.m.;
- Thursday, April 11, 2013, 2:00–5:00 p.m.;
- Thursday, July 11, 2013, 2:00–5:00 p.m.; and
- Thursday, October 10, 2013, 2:00–5:00 p.m.

Location: All meetings will be held at the Paterson Museum, 2 Market Street (intersection of Market and Spruce Streets), Paterson, NJ.

FOR FURTHER INFORMATION CONTACT: Darren Boch, Superintendent, Paterson Great Falls National Historical Park, 72 McBride Avenue; Paterson, NJ 07501, (973) 523–2630.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Paterson Great Falls NHP Federal Advisory Commission. Topics to be discussed include updates on the status of the Paterson Great Falls NHP General Management Plan.

The meetings will be open to the public and time will be reserved during each meeting for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing. Written comments and requests for agenda items may be sent to: Federal Advisory Commission; Paterson Great Falls National Historical Park; 72 McBride Avenue; Paterson, NJ 07501.

Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: December 21, 2012.

Darren Boch,

Superintendent, Paterson Great Falls, National Historical Park.

[FR Doc. 2013–00333 Filed 1–9–13; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2930]

Certain Robotic Toys and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Robotic Toys and Components Thereof,* DN 2930; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Innovation First International, Inc., Innovation First, Inc. and Innovation First Labs, Inc. on January 4, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic toys and components thereof. The complaint names as respondent CVS Pharmacy Inc. of RI.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the

United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2930'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).* Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 7, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00327 Filed 1–9–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–562]

Certain Incremental Dental Positioning Adjustment Appliances and Methods of Producing Same (Enforcement Proceeding); Commission Determination To Review and Reverse an Initial Determination of the Presiding Administrative Law Judge; Termination of the Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and reverse an initial determination (''ID'') (Order No. 57) of the presiding administrative law judge in the above-captioned enforcement proceeding. The enforcement proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on February 15, 2006, based on a complaint filed by Align Technology, Inc. (''Align'') of Santa Clara, California (now of San Jose, California). 71 FR 7995–96. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of certain claims of U.S. Patent Nos. 6,685,469; 6,450,807 (''the '807 patent''); 6,394,801; 6,398,548; 6,722,880 (''the '880 patent''); 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511 (''the '511 patent''); and 6,227,850. The complaint also alleged a violation of section 337 by reason of misappropriation of trade secrets. The Commission's notice of investigation named OrthoClear, Inc. of San Francisco, California; OrthoClear Holdings, Inc. of Tortola, British Virgin Islands; and OrthoClear Pakistan Pvt, Ltd. of Lahore, Pakistan as respondents. On July 11, 2006, the ALJ granted Align's motion to terminate the investigation as to the '807 patent, which the Commission determined not to review. Order No. 10 (July 11, 2006), Notice of Non-Review (July 20, 2006).

On November 13, 2006, the Commission issued notice of its determination not to review the presiding administrative law judge's initial determination granting Align's and respondents' joint motion to terminate the investigation as to respondents (and in its entirety) based on a consent order. The consent order prohibits the importation, sale for importation, and sale in the United States after importation of incremental dental positioning adjustment appliances referenced in the complaint and any other articles manufactured in violation of the asserted patents or trade secrets.

On March 1, 2012, Align filed a complaint for an enforcement proceeding under Commission Rule 210.75, and filed a corrected complaint on March 22, 2012. On April 25, 2012, the Commission determined that the criteria for institution of an enforcement proceeding were satisfied and instituted an enforcement proceeding, naming the following six respondents: ClearCorrect USA of Houston, Texas; ClearCorrect Pakistan (Private), Ltd. (''ClearCorrect Pakistan'') of Lahore, Pakistan; and Mudassar Rathore, Waqas Wahab, Nadeem Arif, and Asim Waheed (the ''bound officers''). 77 FR 25747 (May 1, 2012). The complaint for enforcement, as corrected, asserts that the successors and bound officers of the original respondents have violated the November 13, 2006, consent order by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States of articles that infringe the

'511 and '880 patents. According to the complaint for enforcement, the imported items are digital datasets, which are used to manufacture dental appliances. The notice of institution of an enforcement proceeding noted the threshold issue of whether the accused digital datasets are within the scope of the consent order sought to be enforced, and indicated that the ALJ may wish to consider this issue at an early date.

On November 28, 2012, the ALJ issued Order No. 57, addressing whether the accused digital datasets are articles within the meaning of the consent order. On December 21, 2012, the Commission issued a notice recognizing that Order No. 57 is an ID provided for in the notice of institution of an enforcement proceeding and that the deadline for determining whether to review the ID is January 14, 2013.

On December 6, 2012, respondents filed a petition for review of the ID. On December 13, 2012, complainant and the Commission investigative attorney filed responses.

Having examined the petitions for review, the responses thereto, and the relevant portions of the record, the Commission has determined to review and reverse the subject ID because the subject consent order did not contain an express provision prohibiting the electronic transmission of data. The Commission's determination is dispositive of complainant' s claims, and as such, the Commission terminates the enforcement proceeding with a finding of no violation of the consent order. An opinion will follow.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 4, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00313 Filed 1–9–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 15, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–739 (Third Review)(Clad Steel Plate from Japan). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 28, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 8, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00418 Filed 1–8–13; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 16, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–487 and 731–TA–1198 (Final)(Steel Wire Garment Hangers from Vietnam). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before January 28, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 8, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00426 Filed 1–8–13; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–003]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 18, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–486 and 731-TA–1195–1196 (Final)(Utility Scale Wind Towers from China and Vietnam). The Commission is currently scheduled to transmit its determinations and Commissioners'' opinions to the Secretary of Commerce on or before January 30, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 8, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00477 Filed 1–8–13; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *DMH Partners North, LLC, et al.,* Civil Action No. 12-cv-3203 (RHK/LIB), was lodged with the United States District Court for the District of Minnesota on January 2, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against DMH Partners North, LLC, Patrick T. Christiansen,

Michael J. Christiansen, and Donald Huber, pursuant to sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, to obtain injunctive relief and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants into waters of the United States without complying with the terms and conditions of a permit issued under section 404 of the Clean Water Act, 33 U.S.C. 1344, and for failing to comply with a compliance order regarding the permit violations. The proposed Consent Decree resolves these allegations by requiring Defendant DMH Partners North, LLC to perform mitigation and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Assistant United States Attorney Ann M. Bildtsen, United States Attorney's Office, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 and refer to *United States* v. *DMH Partners North, LLC, et al.,* DJ #90–5–1–1–1904.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 300 South Fourth Street, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–00284 Filed 1–9–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Methodology for Selecting Job Corps Centers for Closure; Comments Request

AGENCY: Office of Job Corps, Employment and Training Administration, Labor.

SUMMARY: The Department of Labor requests public comment on the methodology for selecting Job Corps centers for closure, outlined in this notice.

DATES: Comments are requested February 11, 2013.

ADDRESSES: Address comments to the National Director, Office of Job Corps, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4459, Washington, DC 20210. Please note mail may be delayed because of security procedures.

FOR FURTHER INFORMATION CONTACT: National Director, Office of Job Corps, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4459, Washington, DC 20210; Telephone (202) 693–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

Background: Established in 1964, the Job Corps program is a national program administered by the Department of Labor (DOL or we), Employment and Training Administration (ETA). It is the nation's largest federally-funded, primarily residential training program for at-risk youth, ages 16–24. With 125 centers in 48 states, Puerto Rico, and the District of Columbia, Job Corps provides economically disadvantaged youth with the academic, career technical, and employability skills to enter the workforce, enroll in post-secondary education, or enlist in the military. Serving approximately 60,000 participants each year, Job Corps emphasizes the attainment of academic credentials, including a high school diploma (HSD) or general educational development (GED), and career technical training credentials, including industry-recognized credentials, state licensures, and pre-apprenticeship credentials.

Large and small businesses, nonprofit organizations, and Native American tribes manage and operate 97 of the Job Corps centers through contractual agreements with the Department of Labor following competitive procurement, while 28 centers are operated through an interagency agreement with the U.S. Department of Agriculture (USDA). Job Corps also contracts with firms and companies, usually small businesses, through competitive procurements, to recruit new students for the program and place graduates and former enrollees into meaningful jobs, education programs, the military, or apprenticeship training. Job Corps also receives annual Construction, Rehabilitation, and Acquisition (CRA) funding to build, maintain, expand, or upgrade new and existing facilities at all 125 centers.

Pursuing Program Reform

In Fiscal Year (FY) 2011, we began an ambitious reform agenda aimed at improving the performance of Job Corps centers nationwide. This included setting higher standards for all centers, identifying historically underperforming centers, and implementing appropriate corrective action.

As part of this reform process, Job Corps continues to undergo a rigorous and comprehensive review of its operations and management to identify changes that can be made to improve the program's effectiveness and efficiency. Job Corps has implemented a National Certification Initiative to strengthen and align existing career technical training programs to technical standards established by industries or trade organizations, which enables students to graduate with industry-recognized credentials. These credentials provide for long-term attachment to the workforce and economic mobility as Job Corps graduates advance through their careers. They also ensure that program graduates have gained the skills and knowledge necessary to compete in today's workforce. Job Corps has also expanded academic opportunities for students with the introduction of evening educational programs, as well as community college partnerships and expanded high school diploma options. Current budgetary constraints make it even more critical to ensure the program's resources are deployed in a way that maximizes results to students and taxpayers.

Job Corps has intensified and reinforced federal oversight of operations and performance outcomes for all centers. Federal program managers supervise centers through monitoring visits, desk audits, and Contractor Performance Assessment Reports during each contractor's performance period. Job Corps regional offices also conduct the Regional Office Center Assessments. Through these oversight activities, Job Corps federal program managers develop Performance Improvement Plans (PIPs) for entire centers that need improvement, or Corrective Action Plans (CAPs) to address specific aspects of operations, such as career technical training. Both PIPs and CAPs are used for continued monitoring and implemented for USDA and contract centers respectively. These oversight actions have strengthened collaboration between Job Corps, contractors, and the USDA to rectify deficiencies, and improve policy compliance and performance outcomes.

While the majority of centers meet program standards, some centers are chronically low-performing and have remained in the bottom cohort of center performance rankings for multiple years despite extensive DOL interventions including corrective measures. Given the resource intensiveness of the Job

Corps model, the Administration has determined that it can no longer continue to expend resources on the small number of chronically low-performing centers that have repeatedly failed to provide participants with high-quality Job Corps programming.

For the purpose of identifying chronically low-performing centers for potential closure, we define ''chronically low-performing centers'' as those that consistently lagged in overall performance over the past five consecutive program years, covering Program Year 2007 through Program Year 2011, without evidence of recent performance improvement.

We are committed to selecting centers for closure in a manner that is transparent and objective, and are seeking comments on the proposed methodology outlined in this notice in order to inform all interested parties about the selection process. Job Corps' published performance metrics will be the primary consideration in the selection of centers for closure. Provided below is an overview of the program's Outcome Measurement System (OMS) and our planned methodology for using the OMS and, if applicable, other factors we propose to use to select centers for closure.

Upon review of this notice, interested parties may provide DOL with feedback on the methodology, including the outlined criteria and assigned weights. We will consider this feedback as we finalize the methodology for selecting centers for closure.

Job Corps' Outcome Measurement System

The Workforce Investment Act of 1998 (WIA), the authorizing legislation for the Job Corps program, contains core indicators of performance for recruitment, education and placement rates, wages, and long-term outcomes of graduates after initial placement.

To meet the WIA performance requirements, Job Corps uses a comprehensive performance management system to assess program effectiveness across multiple components of services and programs offered to Job Corps students. This detailed system evaluates the performance of Job Corps center operators, outreach and admissions contractors, and career transition services providers, based on the outcomes of program participants. The performance management system serves three primary purposes:

- To meet accountability requirements by establishing performance measures (also known as metrics) and reporting student outcomes for the Job Corps system by the WIA legislation, Common Performance Measures for federal youth job training programs, and DOL priorities;
- To assess centers' and agencies' accomplishments in implementing program initiatives and serving students effectively; and
- To implement a management tool that provides useful and relevant feedback on performance, while encouraging continuous program improvement.

Job Corps' performance management system for centers is comprised of an OMS Center Report Card, designed to reflect center-level results in participants' academic and career technical training achievement, as well as post-program placement and earnings. Job Corps centers are rated on their performance of student outcomes in three areas: on-center measures, short-term career transition services, and long-term career transition services. On-center measures include student attainments for General Education Development (GEDs) or High School Diplomas (HSDs), career technical training, literacy and numeracy gains, and industry-recognized credentials. Short-term career transition services include placement in jobs related to career technical training, graduate placement rate, graduate hourly wage, and former enrollee placement rate. Lastly, long-term career transition services include graduate weekly earnings at 6 months, and placement retention at 6 months and 12 months after initial placement.

Each OMS Report Card consists of four basic components: results-oriented measures, goals, weights, and ratings, including an overall rating, described as follows:

- Performance *measures* are the categories of outcomes under evaluation, such as an HSD or GED attainment. Measures reflect the program priorities and objectives important to Job Corps' mission.
- Performance *goals* are quantitative benchmarks for each measure that are set to establish a desired level of performance.
- Relative *weights* are assigned to performance measures to indicate areas of emphasis among responsibilities for serving students. Each weight is expressed as a percentage with the sum of all weights in a Report Card totaling 100%.
- The *rating* is the performance (actual percent of goal achieved) on each measure, expressed as a percentage. The *overall rating* is the aggregate of all individual performance measure ratings expressed as a percentage.

The overall OMS ratings serve as the basis for ranking Job Corps center performance, and are used in performance-based service contracting to incentivize performance excellence. More information about Job Corps' OMS and center performance results can be found at the Job Corps public Web site: *http://www.jobcorps.gov/AboutJobCorps/performance_planning.aspx*.

In short, Job Corps' performance management system measures effectiveness in executing the program's mission and supporting the Secretary of Labor's vision of ''Good Jobs for Everyone.'' By doing so, this system meets the legislative intent of the WIA and other reporting requirements.

Factors for Selecting Job Corps Centers for Closure

Provided below is a description of the proposed factors to select a small number of Job Corps centers for closure. On August 14, 2012, the Office of Job Corps hosted a national Job Corps listening session via webinar with the Job Corps community to solicit input on these factors. More than 100 Job Corps stakeholders participated in the session and provided criteria-related suggestions in the areas of performance, geographic location, local economic impact, contract budgets, facilities, and the time period for evaluating chronic low performance.

In addition, we are working collaboratively with the USDA to address the unique qualities of the USDA's operation of 28 Civilian Conservation Centers.

Based on the feedback it has received and its own analysis, we identified the following primary criteria against which all centers will be measured:

- Five-year performance level, including considerations for patterns of demonstrable and recent performance improvement;
- On-Board Strength (OBS);
- Facility condition and physical plant; and
- Continued availability of Job Corps services in each state, the District of Columbia, and Puerto Rico.

While the factors above are the primary ones proposed for determining center closures, additional consideration may be given to Job Corps' continuing commitment to diversity.

1. Five-Year Performance Levels

Given that the Job Corps' performance metrics provide a comprehensive assessment of center performance, allow

for comparison of performance among centers, and supply enough data for decision makers to determine trends over time, the OMS will be the guiding factor in selecting centers for closure. We believe this approach is the most equitable and transparent for both stakeholders and the public, as these published performance metrics have driven center performance and programmatic decisions for over a decade.

We plan to evaluate each center's overall OMS ratings for the last five full program years, Program Years 2007–2011, to derive a weighted five-year average rating. The five-year average for ratings will be critical to guiding the evaluation. We selected the five-year performance period for the following reasons:

- Uses the most recent performance data available;
- Allows enough time to analyze impact of any Performance Improvement Plans (PIPs);
- Provides a stable basis for comparison, since the measurement system had no significant changes over the past five years; and
- Relies on published outcomes that have been transparent to the system over time.

This factor will be assigned a weight of 70%. The original OMS ratings for each of the five program years will be normalized at one hundred percent (100%) so as to be consistent with the OBS and Facility Condition Index (FCI) data. Normalized means the data has been placed on a 100 point scale.

We also plan to weight recent performance more heavily than previous years, to acknowledge cases in which there might be recent improvement trends. To reflect this, weights will be applied to each of the five program years' performance data, with recent years receiving more weight to incorporate performance improvement. The year-by-year weighted structure is as follows:

PY 2011—30%
PY 2010—25%
PY 2009—20%
PY 2008—15%
PY 2007—10%

Total: 100%

The calculation formula for five-year performance is as follows:

Center's five-year weighted average rating × 70%= Overall Performance Rating

2. On-Board Strength

On Board Strength is an efficiency rating that demonstrates the extent to which a center operates at full capacity. Job Corps already uses this measure to assess center performance. The measure is reported as a percentage, calculated by the actual slot capacity divided by the planned slot capacity (daily number of students that a center is authorized to serve). The national goal for OBS is 100% in order to operate the program at full capacity, maximize program resources, and fulfill the mission of serving the underserved student population. Centers operating below 100% OBS create cost inefficiencies, such as underutilization of center staff, equipment, and facilities.

We plan to evaluate each center's end of Program Year OBS rating for the last five full program years, specifically Program Years 2007–2011, to derive a five-year average rating.

This factor will be assigned a weight of 20%. The original OBS ratings for each of the five program years will be normalized at one hundred percent (100%) so as to be consistent with the OMS and FCI data.

As with the performance criterion, weights will be applied to each of the five program years' OBS data, with recent years receiving more weight to incorporate performance improvement. The year-by-year weighted structure is as follows:

PY 2011—30%
PY 2010—25%
PY 2009—20%
PY 2008—15%
PY 2007—10%

Total: 100%

The calculation formula for five-year OBS is as follows:

Center's five-year weighted average cumulative OBS x 20%= Overall OBS Rating

3. Facility Condition and Physical Plant

In a program that operates 24 hours per day, seven days per week and is primarily residential, facility conditions are important. The quality of Job Corps' residential and learning facilities has a direct impact on students' experiences and, ultimately, their educational achievement. Each Job Corps center is a fully operational complex with academic and career technical training facilities, dining and recreation buildings, administrative offices, and residence halls (with the exception of solely non-residential facilities), including the surrounding owned or leased property on which the center is located.

Job Corps receives an annual appropriation for Construction, Rehabilitation, and Acquisition (CRA) that is used to improve facility conditions at Job Corps centers. To properly manage the program's facility and condition needs, Job Corps uses an FCI and gives each center an annual rating. This rating, which is expressed as a percentage, accounts for the value of a center's construction, rehabilitation, and repair backlog, as compared to the replacement value of the center's facilities. Facility condition affects the outcomes of the Job Corps program because ''Good Jobs for Everyone'' begins with facilities that contribute to a safe learning environment.

Given funding constraints, we must make strategic decisions about the continued allocation of its CRA resources. For this factor, we will evaluate each center's Program Year 2011 Facility Condition Index, which takes into account all construction projects completed over the same five-year period as the other two factors, specifically Program Years 2007–2011.

This factor will be assigned a weight of 10%.

As with the performance and OBS criteria, weights will be applied to each of the five program years' FCI data, with recent years receiving more weight to incorporate improvement. The year-by-year weighted structure is as follows:

PY 2011—30%
PY 2010—25%
PY 2009—20%
PY 2008—15%
PY 2007—10%

Total: 100%

The calculation formula for FCI is as follows:

Center's five-year weighted average FCI rating × 10% = Overall FCI Rating

Ranking Centers for Closure

The analysis of the factors above will yield an overall rating for each center. This will allow us to create a list that ranks all centers, with the lowest performing centers receiving the lowest ratings. The calculation formula is as follows:

Overall Performance Rating (70%).	+	Overall OBS Rating (20%) ...	+	Overall FCI Rating (10%)	=	Overall Rating for Primary Selection Factors.

4. Job Corps Services Available in Each State, Puerto Rico, and the District of Columbia

In addition to the above three primary criteria with quantifiable data, DOL will also ensure that Job Corps services remain available in each state, Puerto Rico, and the District of Columbia. We believe it is in the best interests of Job Corps' target population to ensure that potential students have access to Job Corps in the geographic areas in which they reside. We intend to maintain at least one Job Corps center in each state, the Commonwealth of Puerto Rico, and the District of Columbia to ensure that training is aligned with local and regional labor market opportunities. The centers of Ottumwa, Milwaukee, Pinellas, Denison, Gulfport and New Orleans are not included for consideration. In each case, there is insufficient data to evaluate each center's performance over the full five-year period.

Additional Considerations

Subordinate to the primary selection criteria listed above, additional consideration may be given to Job Corps' commitment to diversity. Job Corps currently serves a diverse student population and remains committed to serving disadvantaged youth from all backgrounds. We may consider whether a center's closure would have a disproportionate impact on a certain subpopulation of students in making a final closure decision.

Timeline for Selecting Job Corps Centers for Closure

We will begin to implement the selection and closure process by Program Year 2013, following the legislatively mandated activities pertaining to center closure required by the WIA and as stipulated in the DOL/USDA Interagency Agreement. We estimate that it will take a minimum of six months to execute closure of a center. If a contract center is selected for closure, we anticipate that the mechanism for closing the contract center will be through a decision not to exercise its option year or to renew a center operator's contract. If a USDA center is selected for closure, we will continue working collaboratively with the USDA to ensure adherence to the existing Interagency Agreement.

The Process for Closing Job Corps Centers, as Outlined in the Workforce Investment Act

In addition to the steps outlined above, we will ensure that it follows the legislatively-mandated process for closing a Job Corps center, in Section 159 of the WIA, which includes the following:

- The proposed decision to close the center is announced in advance to the general public through publication in the **Federal Register** or other appropriate means;
- A reasonable comment period, not to exceed 30 days, is established for interested individuals to submit written comments to the Secretary; and
- The Member of Congress who represents the district in which such center is located is notified within a reasonable period of time in advance of any final decision to close the center.

Dated: Signed in Washington, DC, on this 3rd day of January, 2013.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2013–00337 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,811]

Esselte Corporation, Including On-Site Leased Workers From Onin Staffing, Resource Manufacturing, and Express Employment Professionals, Morristown, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 2012, applicable to workers and former workers of Esselte Corporation, including on-site leased workers from Onin Staffing, Morristown, Tennessee. The Department's Notice of determination was published in the **Federal Register** on August 9, 2012 (77 FR 47673). Workers were engaged in employment related to the production of envelope and legal pads.

At the request of a duly authorized representative, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from Resource Manufacturing and Express Employment Professionals were employed on-site at the Morristown, Tennessee location of Esselte Corporation, Morristown, Tennessee. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Resource Manufacturing and Express Employment Professionals working on-site at the Morristown, Tennessee location of Esselte Corporation.

The amended notice applicable to TA–W–81,811 is hereby issued as follows:

All workers of Esselte Corporation, including on-site leased workers from Onin Staffing, Resource Manufacturing, and Express Employment Professionals, Morristown, Tennessee, who became totally or partially separated from employment on or after July 17, 2011, through July 27, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DCm this 28th day of December, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–00341 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,718]

Daimler Buses North America, Inc., a Subsidiary of Daimler North America Corp, Including On-Site Leased Workers From Noramtec, First Choice Staffing, Staff Works, and Mr. Santo Lamarco From Wurth Revcar Fasteners, Inc., Oriskany, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 28, 2012, applicable to workers of Daimler Buses North America, Inc. a subsidiary of Daimler North America Corp., including leased workers from Noramtec, First Choice Staffing, and Staff Works, Oriskany, New York. The workers are engaged in activities related to the production of transit buses. The notice was published in the **Federal Register** on October 12, 2012 (77 FR 62260).

At the request of New York State Department of Labor, the Department reviewed the certification for workers of the subject firm. New information shows that a worker leased from Wurth Revcar Fasteners, Inc. was also employed on-site at Daimler Buses North America, Inc., Oriskany, New York. The Department has determined that this worker was sufficiently under the control of Daimler Buses North America, Inc. to be considered a leased worker.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased customer imports of transit buses.

Based on these findings, the Department is amending this certification to include the worker leased from Wurth Revcar Fasteners, Inc. working on-site at the Oriskany, New York location of the subject firm.

The amended notice applicable to TA–W–81,718 is hereby issued as follows:

All workers of Daimler Buses North America, Inc., a subsidiary of Daimler North America Corp., including on-site leased workers from Noramtec, First Choice Staffing, Staff Works, and Mr. Santo LaMarco from Wurth Revcar Fasteners, Inc., Oriskany, New York, who became totally or partially separated from employment on or after June 8, 2011, through September 28, 2014, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 28th day of December 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–00342 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of December 17, 2012 through December 31, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a

domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,158	Mohawk Industries, Inc., Backing Division	Waynesboro, VA	December 9, 2011.
82,224	Evraz Stratcor, Inc., Strategic Minerals Corporation.	Hot Springs, AR	December 6, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,005	Boston Scientific Corporation	Maple Grove, MN	September 25, 2011.
82,005A	Boston Scientific Corporation	Plymouth, MN	September 25, 2011.
82,123	Medtronic, Inc., Cardiac and Vascular Group, Excluding the Cardiac Rhythm Disease Mgmt, etc..	Mounds View, MN	October 31, 2011.
82,123A	Medtronic, Inc., Cardica and Vascular Group, Cardiac Rhythm Disease Mgmt. Op. Segment, etc..	Mounds View, MN	October 2, 2012.
82,149	Texon USA Inc., Texon International Group Limited.	Russell, MA	October 4, 2011.
82,169	T-Systems North America, Inc.	Andover, MA	November 21, 2011.
82,170	TI Automotive, Ltd., FCS (Fluid Carrying System) Division, Elwood Staffing.	Cynthiana, KY	November 21, 2011.
82,172	Nanya Technology Corporation Delaware, Nanya Technology Corporation-Taiwan.	Houston, TX	November 26, 2011.
82,175	Philips Healthcare, MRI, Adecco	Highland Heights, OH	November 16, 2011.
82,186	Faurecia, Emissions Control Technologies, Express Employment & Manpower.	Dexter, MO	January 26, 2013.
82,199	Regal Beloit Corporation, Springfield, Missouri Division, Penmac Personnel Services.	Springfield, MO	November 30, 2011.
82,201	XOR Media, Formerly SeaChange International.	Greenville, NH	December 3, 2011.
82,203	Huntingdon County Site, FCI USA, LLC, Americas Division, FCI SA, Manpower, Inc..	Mount Union, PA	January 23, 2012.
82,205	Thermo Electron North America, LLC, Thermo Fischer Scientific, Adecco and Aerotek.	Madison, WI	December 4, 2011.
82,214	Kulicke & Soffa Industries, Aerotek and ITC, UI Wages Reported Through Orthodyne Electronics.	Irvine, CA	December 11, 2012.
82,238	Dolby Laboratories, Inc., Manufacturing Division, Zerochaos and Modis.	Brisbane, CA	December 10, 2011.
82,244	Philips Lighting, Philips Lightolier Division, Adecco.	Wilmington, MA	December 10, 2011.
82,253	Cardinal Health, Financial Shared Services West, Aerotek, Excel Staffing and Experis Finance.	Albuquerque, NM	December 13, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,118	Hanson Worldwide LLC	Spokane, WA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,901	iPacesetters, LLC	Eau Claire, WI.	
82,095	Verizon Services Corporation, Customer Service Clerk, General Clerk.	Clarksburg, WV.	
82,136	Peabody Indiana Services, LLC, Air Quality Mine, Custom Staffing Services.	Vincennes, IN.	
82,138	Prudential Insurance Company of America, Prudential Annuities, Transfer of Assets Division.	Dresher, PA.	
82,144	Electrolux Home Care Products Inc., Distribution Center.	El Paso, TX.	
82,180	Comcast Cable, West Division Customer Care	Morgan Hill, CA.	
82,188	PNC Bank, National Association, Retail Bank ..	Franklin, PA.	
82,188A	PNC Bank, National Association, Retail Bank ..	West Chester, IL.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
82,062	Pemco World Air Services	Florence, KY.	
82,177	Tyco Electronics Corporation, TE Connectivity Ltd. Company.	Middletown, PA.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,996	Novartis Pharmaceutical Corporation, Primary Care Business Unit (Sales) Division.	Schaumberg, IL.	
82,130	Wurth Revcar Fasteners, Inc., Working on-site at Daimler Buses North America, Inc.	Oriskany, NY.	
82,232	EEP Quality Group, Inc.	Syracuse, NY.	

I hereby certify that the aforementioned determinations were issued during the period of December 17, 2012 through December 31, 2012. These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: January 2, 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–00338 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,074]

Komax Solar, Inc., a Wholly Owned Subsidiary of Komax Holdings AG, York, PA; Notice of Negative Determination Regarding Application for Reconsideration

By applications received on November 12, 2012 and November 26, 2012, two workers independently requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Komax Solar, Inc., a wholly owned subsidiary of Komax Holdings, AG, York, Pennsylvania (subject firm or Komax). The negative determination was issued on November 1, 2012. The Department's Notice of Determination was published in the **Federal Register** on November 26, 2012 (77 FR 70480).

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers of Komax were engaged in activities related to the production of solar panel production machines. The products manufactured at the subject firm are predominantly for export sale.

The petition stated that the workers were informed by the subject firm that the layoffs were a result of production shifting to a Komax facility in Asia. In the request for reconsideration, the workers again asserted that separations at Komax are attributable to a future shift of solar panel production to Asia.

Machines used to produce solar panels are not component parts of solar panels and are neither like nor directly competitive with solar panels.

The negative determination was based on the Department's findings that the subject firm did not shift to a foreign country the production of articles like or directly competitive with the solar panel production machines produced by the workers, or acquire the production of such articles from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports by the subject firm of articles like or directly competitive with solar panel production machines; and that the workers' firm is not a supplier or a downstream producer to a firm that employed a group of workers who received a TAA certification.

The Department did not conduct a survey on the subject firm's declining domestic customers of solar panel production machines because sales to domestic customers increased during the relevant time period. Further, the articles manufactured at the subject firm during the relevant time period were almost entirely export sales.

One of the requests for reconsideration alleges ''flooding of the market by underpriced Chinese solar modules.'' The Department notes that the International Trade Commission did not name Komax as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

The workers in the requests for reconsideration did not supply facts not previously considered or provide additional documentation indicating that there was either 1) a mistake in the determination of facts not previously considered or 2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the applications and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of December, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–00340 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221)(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of January 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—45 TAA PETITIONS INSTITUTED BETWEEN 12/17/12 AND 12/31/12

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82258	Premier Silica LLC (State/One-Stop)	Glenford, OH	12/17/12	12/14/12
82259	YP Holdings LLC (Workers)	St. Louis, MO	12/17/12	12/14/12
82260	HB Smith Company Inc. (State/One-Stop)	Westfield, MA	12/17/12	12/12/12
82261	Genzyme Science Center (State/One-Stop)	Framingham, MA	12/17/12	12/17/12
82262	Cequent Performance Products, Inc. (Union)	Goshen, IN	12/17/12	12/14/12
82263	American Airlines (Workers)	Tulsa, OK	12/17/12	12/14/12
82264	American Cotton Growers (State/One-Stop)	Littlefield, TX	12/17/12	12/14/12
82265	State Street Corporation (State/One-Stop)	North Quincy, MA	12/17/12	12/12/12
82266	Integrated Medical Partners (State/One-Stop)	Milwaukee, WI	12/18/12	12/14/12
82267	Hostess Brands (Workers)	Tulsa, OK	12/18/12	11/14/12
82268	Red Wing Shoe Company, Inc. (Company)	Danville, KY	12/18/12	12/17/12
82269	Federal—Mogul (Company)	Smithville, TN	12/18/12	12/18/12
82270	Trim Masters (Company)	Nicholasville, KY	12/18/12	12/17/12
82271	Nokia, Inc. System Integration (State/One-Stop)	Arlington Heights, IL	12/18/12	11/15/12
82272	L & W Supply Corporation (State/One-Stop)	Nottingham, MD	12/18/12	12/17/12
82273	Johnson Controls (State/One-Stop)	Milwaukee, WI	12/18/12	12/14/12
82274	Applied Materials, Inc. (Workers)	Kalispell, MT	12/18/12	12/13/12
82275	Delphi (Workers)	Troy, MI	12/19/12	12/18/12
82276	Peak Sun Silicon Corporation (Workers)	Albany, OR	12/19/12	12/14/12
82277	The Berry Company, LLC (Company)	Englewood, CO	12/19/12	12/18/12
82278	Hostess Brands (44 IL Locations) (State/One-Stop)	Illinois	12/19/12	12/18/12
82279	HL Operating Corp.d/b/a Hartmann (Workers)	Lebanon, TN	12/19/12	12/06/12
82280	Tri-Tronics, Inc. (an affiliate of Garmin International, Inc) (Company).	Tucson, AZ	12/19/12	12/17/12
82281	Fiberblade, LLC (Union)	Ebensburg, PA	12/20/12	12/19/12
82282	Exide Technologies (Company)	Laureldale, PA	12/20/12	12/19/12
82283	Reckitt Benckiser, LLC (Company)	Fort Worth, TX	12/20/12	12/19/12
82284	IBM (State/One-Stop)	Armonk, NY	12/20/12	12/19/12
82285	United States Steel (Union)	McKeesport, PA	12/20/12	12/19/12
82286	Oshkosh Corporation (Union)	Oshkosh, WI	12/20/12	12/17/12
82287	Hewlett Packard (State/One-Stop)	Conway, AR	12/21/12	12/20/12
82288	Gamesa Technology Corporation (Union)	Trevose, Fairless Hills, and Bristol, PA.	12/21/12	12/20/12
82289	American Airlines (Workers)	Tulsa, OK	12/27/12	12/12/12
82290	Hewlett Packard (State/One-Stop)	Houston, TX	12/27/12	12/21/12
82291	Lee Enterprises, Inc. (State/One-Stop)	Helena & Butte, MT	12/27/12	12/26/12
82292	Umicore USA Inc. (State/One-Stop)	Providence, RI	12/27/12	12/21/12
82293	Fiserv Inc. (State/One-Stop)	Walnut, CA	12/27/12	12/21/12
82294	American Airlines (Workers)	Tulsa, OK	12/27/12	12/20/12
82295	Radisys (Company)	San Diego, CA	12/27/12	12/20/12
82296	Lattice Semiconductor (Company)	Hillsboro, OR	12/27/12	12/21/12
82297	Brunswick Laboratories, Inc. (Workers)	Southboro, MA	12/27/12	12/20/12
82298	Hostess Brands (Workers)	Redding, CA	12/27/12	12/20/12
82299	Barclay Elementary—Middle (Company)	Baltimore, MD	12/27/12	12/18/12
82300	UBS Financial Services (Workers)	Weehawken, NJ	12/28/12	12/27/12
82301	Carrier (State/One-Stop)	Tyler, TX	12/28/12	12/27/12
82302	Wausau Paper Mill (State/One-Stop)	Brainerd, MN	12/28/12	12/27/12

[FR Doc. 2013–00339 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Veterans Supplement to the Current Population Survey (CPS),'' to be conducted in August 2013, August 2014, and August 2015.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before March 11, 2013.

ADDRESSES: Send comments to Amelia Vogel, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amelia Vogel, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of official Government statistics on employment and unemployment since 1940 (73 years). Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans Supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. Also, Afghanistan, Iraq, and Vietnam veterans are identified by location of service. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information on veterans' participation in various transition and employment and training programs. The data collected through this supplement will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS. An extension without change of a currently approved collection is needed to continue to provide the Nation with timely information about the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, recently discharged veterans, and veterans who have served in Afghanistan, Iraq, or Vietnam.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 10,000.

Frequency: Annually.

Total Responses: 10,000.

Average Time per Response: Approximately 2 minutes.

Estimated Total Burden Hours: 333 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 4th day of January 2013.

Eric Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–00322 Filed 1–9–13; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–002]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held via teleconference and WebEx for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, February 14, 2013, 1:00 p.m. to 5:00 p.m., local time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–369–2180, pass code APS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 999 336 782, and password APS@Feb14.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Astrophysics Division Update

—NASA Astrophysics Roadmapping

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–00344 Filed 1–9–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for

disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 11, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (DAA–0370–2012–0003, 2 items, 2 temporary items). Weather forecast records relating to tropical storms and volcanic ash events.

2. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–12–4, 1 item, 1 temporary item). Summary visa document provided by immigrant upon entry into the United States.

3. Department of Homeland Security, U.S. Coast Guard (N1–26–08–5, 6 items, 3 temporary items). Merchant mariner personnel and licensing records dating 1968 to present for whom the Coast Guard does not issue a report of separation from military service, and electronic copies of personnel and licensing records dating 1967 and prior. Proposed for permanent retention are merchant mariner personnel and licensing records dating 1967 and prior, those dating 1968 to present for whom the Coast Guard does issue a separation from military service, and officer licensing files index cards dating 1947 to 1981.

4. Department of Homeland Security, Transportation Security Administration (N1–560–12–2, 18 items, 18 temporary items). Records relating to airport security and aviation security rules and regulations.

5. Department of Justice, Federal Bureau of Investigation (N1–65–12–3, 1 item, 1 temporary item). Master files of an electronic information system containing leads, tips, and other information gathered during a crisis or special event.

6. Department of State, Bureau of Diplomatic Security (N1–59–11–18, 5 items, 5 temporary items). Records of the Countermeasures Directorate Front Office including construction project and building security files, weekly activity reports, copies of correspondence, and records used to accumulate budget estimates.

7. Federal Retirement Thrift Investment Board, Office of Finance (N1–474–12–10, 3 items, 3 temporary items) Records created during development of budget estimates and annual budgets.

8. General Services Administration, Office of the Chief Acquisition Officer (N1–269–10–1, 1 item, 1 temporary item). Master files of an electronic information system used to identify parties excluded from receiving federal funds.

9. Securities and Exchange Commission, Enforcement Division (N1–266–09–4, 6 items, 4 temporary items). Records of the Enforcement Division, including non-significant investigative case files, referrals, and administrative records. Proposed for permanent retention are significant investigative case files, including preliminary investigations.

Dated: January 2, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–00294 Filed 1–9–13; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2012–0310]

Consideration of Approval of Application Containing Sensitive Unclassified Non-Safeguards Information Regarding Proposed Energy Future Holdings Corporation Internal Restructuring

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for indirect license transfer; opportunity for hearing, to petition for leave to intervene, and to comment; order; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 2, 2013 (78 FR 119). This action is necessary to correct an incorrect Docket ID.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667; email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 119 of **Federal Register** document 2012–31527, published January 2, 2013 (78 FR 119–123), the heading is corrected to read ''NRC–2012–0310.'' Also on the same page, second column, in the first paragraph under the **ADDRESSES** section and in the first bullet under the **ADDRESSES** section, ''NRC–2012–0301'' is corrected to read ''NRC–2012–0310.'' Also on the same page, third column, in the first paragraph under the ''Accessing Information'' section and in the first bullet under the ''Accessing Information'' section, ''NRC–2012–0301'' is corrected to read ''NRC–2012–0310.'' On the same page, third column, in the first paragraph under the ''Submitting Comments'' section, ''NRC–2012–0301'' is corrected to read ''NRC–2012–0310.''

Dated at Rockville, Maryland, this 4th day of January 2013.

For the Nuclear Regulatory Commission.

Helen Chang,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2013–00326 Filed 1–9–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–23694–SP; ASLBP No. 13–925–01–SP–BD01]

Charlissa C. Smith; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR §§ 2.103(b), 2.300, 2.309, 2.313(a), 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Charlissa C. Smith, (Denial of Senior Reactor Operator License).

This proceeding concerns a hearing request from Charlissa C. Smith, dated December 5, 2012, challenging a denial letter from the Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC) dated November 15, 2012 notifying her that, following an administrative review, the NRC is in agreement with Region II's decision of May 11, 2012 not to issue her a Senior Reactor Operator License for the Vogtle Power Station.

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Ronald M. Spritzer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Brian K. Hajek, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

As provided in 10 CFR 2.302, all correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 4th day of January 2013.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2013–00328 Filed 1–9–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68581; File No. SR–NASDAQ–2012–147]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust High Yield Long/Short ETF of First Trust Exchange-Traded Fund IV

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust High Yield Long/Short ETF (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed exchange traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Fund is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[4]

Description of the Shares and the Fund

First Trust Advisors L.P. is the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation (''BNY'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.[5]

Paragraph (g) of Rule 5735 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-advisor.

First Trust High Yield Long/Short ETF

According to the Registration Statement, the Fund's primary investment objective is to provide current income. The Fund has a secondary objective of capital appreciation. The Fund will pursue its objective by seeking to invest in a broadly diversified portfolio comprised principally of high yield debt securities.

The Adviser will combine a fundamental credit selection process with top down relative value analysis when selecting investment opportunities. The Adviser believes that an evolving investment environment offers varying degrees of investment risk opportunities in the high yield, bank loan, and fixed income instrument markets. In order to capitalize on investments and effectively manage potential risk, the Adviser believes that the combination of thorough and continuous credit risk analysis, market evaluation, diversification and the ability to reallocate investments is critical to achieving higher risk-adjusted returns.

Investments

According to the Registration Statement, the Fund, under normal market conditions,[7] will invest at least 80% of its net assets (plus the amount of any borrowing for investment purposes) in high yield debt securities that are rated below investment grade at the time of purchase or unrated securities deemed by the Fund's Adviser to be of comparable quality, commonly referred to as ''junk'' bonds. Such securities may include U.S. and

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Fund would not be the first actively-managed fund listed on the Exchange; *see* Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release Nos. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund); 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR–NYSE–Arca–2011–54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66342 (February 7, 2012), 77 FR 7623 (February 13, 2012) (SR–NYSEArca–2011–82) (order approving listing and trading of WisdomTree Emerging Markets Inflation Protection Bond Fund); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR–NYSEArca–2012–25) (order approving listing and trading of WisdomTree Brazil Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] *See* Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated October 11, 2012 (File Nos. 333–174332 and 811–22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[5] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on a fixed income portfolio (including without limitation exchange-traded notes and senior loans) or a portfolio invested in a combination of equity securities and fixed income securities, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

non-U.S. corporate debt obligations, bank loans and convertible bonds. For purposes of determining whether a security is below investment-grade, the lowest available rating will be considered. At least 75% of the Fund's net assets invested in high yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.[8]

High yield debt may be issued by companies without long track records of sales and earnings, or by issuers that have questionable credit strength. High yield debt and comparable unrated debt securities: (a) Will likely have some quality and protective characteristics that, in the judgment of the rating agency evaluating the instrument, are outweighed by large uncertainties or major risk exposures to adverse conditions; and (b) are predominantly speculative with respect to the issuer's capacity to pay dividends or interest and repay principal in accordance with the terms of the obligation. Many below-investment grade debt securities are subject to legal or contractual restrictions limiting the Fund's ability to resell the securities to the general public.

According to the Registration Statement, the Fund may invest in corporate debt securities issued by U.S. and non-U.S. companies of all kinds, including those with small, mid and large capitalizations. Notes, bonds, debentures and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Corporate debt may carry fixed or floating rates of interest.

The Fund may invest up to 15% of its net assets in bank loans, which may also include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in such loans by purchasing assignments or all or a portion of loans or loan participations from third parties. These loans are made by or issued to corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and are then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate although some loans pay a fixed rate. Due to their subordination in the borrower's capital structure, unsecured and/or subordinated loans involve a higher degree of overall risk than senior bank loans of the same borrower. Unfunded contracts are commitments by lenders (such as the funds) to loan an amount in the future or that is due to be contractually funded in the future. The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment.

The Fund may invest in non-income producing securities including defaulted securities and common stocks;[9] companies whose financial condition is troubled or uncertain and that may be involved in bankruptcy proceedings, reorganizations or financial restructurings. The Fund may also invest in investment grade[10] debt securities. The Fund does not have any portfolio maturity limitation and may invest its assets in securities with short-term, medium-term or long-term maturities. The Fund will not invest more than 15% of the portfolio in such distressed securities, as determined at the time of the investment.

Non-U.S. debt securities in which the Fund may invest include debt securities issued or guaranteed by companies organized under the laws of countries other than the United States (including emerging markets), debt securities issued or guaranteed by foreign, national, provincial, state, municipal or other governments with taxing authority or by their agencies or instrumentalities and debt obligations of supranational governmental entities such as the World Bank or European Union. These debt securities may be U.S. dollar-denominated or non-U.S. dollar-denominated. Non-U.S. debt securities also include U.S. dollar-denominated debt obligations, such as ''Yankee Dollar'' obligations, of foreign issuers and of supra-national government entities. Yankee Dollar obligations are U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks and governments. Foreign debt securities also may be traded on foreign securities exchanges or in over-the-counter capital markets. Under normal market conditions, up to 10% of the net assets of the Fund's investment in foreign securities may be denominated in currencies other than the U.S. dollar. To the extent the Fund invests in such instruments, the value of the assets of the Fund as measured in U.S. dollars will be affected by changes in exchange rates.

The Fund may invest in preferred securities and convertible securities. Preferred securities, which generally pay fixed or adjustable-rate dividends or interest to investors and have preference over common stock in the payment of dividends or interest and the liquidation of a company's assets, which means that a company typically must pay dividends or interest on its preferred securities before paying any dividends on its common stock. Preferred securities are generally junior to all forms of the company's debt, including both senior and subordinated debt.

As part of its investment strategy, the Fund intends to maintain both long and short positions in securities under normal market conditions. The Fund will take long positions in securities that the Adviser believes in the aggregate to have the potential to outperform the Fund's benchmark, the Bank of America Merrill Lynch U.S. High Yield Master II Constrained Index (the ''Index''). The Fund's long positions may total up to 130% of the Fund's Managed Assets. ''Managed Assets'' means the average daily gross asset value of the Fund (which includes the principal amount of any borrowings), minus the sum of the Fund's liabilities. The Fund will take short positions in securities that the Adviser believes in the aggregate will underperform the Index. These securities may consist of securities included in the Index or other securities, including U.S. Treasury securities and/or corporate debt obligations that may be rated investment grade or non-investment grade, which the Adviser believes in the aggregate will underperform the Index. The Fund's short positions may total up to 30% of the Fund's Managed Assets. A ''short sale'' is a transaction in which

[8] If a downgrade occurs, the Adviser will consider what action, including the sale of such security, is in the best interest of the Fund and its shareholders.

[9] The equity securities in which the Fund may invest (including any that have converted from convertible debt) will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[10] According to the Adviser, ''investment grade'' means securities rated in the Baa/BBB categories or above by one or more nationally recognized securities rating organizations (''NRSROs''). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

the Fund sells a security that it does not own (and borrows the security to deliver it to the buyer) in anticipation that the market price of the security will decline. The proceeds received from the Fund's short sales of securities will generally be used to purchase all or a portion of the Fund's additional long positions in securities.

The Fund will use short sales for investment and risk management purposes, including when the Adviser anticipates that the market price of securities will decline or in the aggregate will underperform the Index. Short sales are transactions in which the Fund sells a security or other instrument (such as an option, forward, futures or other derivative contract) that it does not own. Short selling allows the Fund to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. In times of unusual or adverse market, economic, regulatory or political conditions, the Fund may not be able, fully or partially, to implement its short selling strategy. If a security sold short increases in price, the Fund may have to cover its short position at a higher price than the short sale price, resulting in a loss. The Fund will have substantial short positions and must borrow those securities to make delivery to the buyer.

Other Investments

The Fund may invest in U.S. government securities. U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

The Fund may invest in U.S. agency mortgage-backed securities and collateralized mortgage securities issued by the Government National Mortgage Association (''GNMA''), the Federal National Mortgage Association (''FNMA''), and the Federal Home Loan Mortgage Corporation (''FHLMC'').

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings varies and depends on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of temporary investments is not a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[11] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. The Fund may only invest in commercial paper rated A–2 or higher by S&P Ratings, Prime-2 or higher by Moody's or F2 or higher by Fitch.

The Fund intends to hedge its non-U.S. dollar holdings. Generally, the Fund's currency exchange transactions will be conducted on a spot (*i.e.,* cash) basis at the spot rate prevailing in the currency exchange market. The cost of the Fund's currency exchange transactions will generally be the difference between the bid and offer spot rate of the currency being purchased or sold. In order to protect against uncertainty in the level of future currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

The Fund may invest up to 10% of its net assets in securities of other open-end or closed-end investment companies, including ETFs [12] that invest primarily in securities of the types in which the Fund may invest directly. In addition, the Fund may invest a portion of its assets in pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. According to the Registration Statement, the Fund may invest in other investment companies to the extent permitted by the 1940 Act.

The Fund may receive equity, warrants, corporate bonds and other such securities as a result of the restructuring of the debt of an issuer, or a reorganization of a bank loan or bond, or as part of a package of securities acquired together with a high yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives and strategies as described above.

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including variable rate master demand notes and 144A securities from issues with less than $100 million original principal amount outstanding. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

[11] According to the Registration Statement, the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser monitors the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement.

[12] As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities generally designed to track the performance of a securities index, including industry, sector, country and region indexes. Such ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASDAQ Rule 5705); Managed Fund Shares (as described in Nasdaq Rule 5735), and closed-end funds. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X or 3X) ETFs.

liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies.[13]

The Fund may not, as to 75% of its total assets, (a) invest more than 5% of the value of its total assets in the securities of any one issuer or (b) hold more than 10% of the outstanding voting securities of that issuer (other than securities of other investment companies and obligations issued or guaranteed by the U.S. government or any agency or instrumentality thereof).[14]

Consistent with the exemptive order referenced in footnote 5, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the investment objective and strategies described in the Registration Statement. The Fund will not invest to enhance leverage.

The Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'')[15] only in large blocks of Shares (''Creation Units'') in transactions with Authorized Participants. Creation Units generally will consist of 50,000 Shares, though this may change from time to time. Creation Units are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for a portfolio of high yield debt securities and other instruments closely approximating the holdings of the Fund or a designated basket of non-U.S. currency and/or an amount of U.S. cash. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation or a Depository Trust Company participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[16] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session[17] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[18] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of fixed income securities, and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735 as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[19] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. In addition, during hours when the markets for local debt in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Intra-day, executable price quotations of the fixed income securities and other assets held by the Fund are available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and volume of the Shares is and will be continually available on a real-time

[13] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[14] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[15] The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time (the ''NAV Calculation Time''). NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* Registration Statement.

[16] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[17] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

[18] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[19] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [20] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121; for example, the Shares of the Fund will be halted if the ''circuit breaker'' parameters in Nasdaq Rule 4120(a)(11) are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 7:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

Nasdaq believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for derivative products, including Managed Fund Shares.[21] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[22] The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act [23] in general and Section 6(b)(5) of the Act [24] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing

[20] *See* 17 CFR 240.10A–3.

[21] FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

[22] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

agreement. Under normal circumstances, the Fund will invest at least 80% of its assets in high yield debt securities. The Fund's exposure to any single issuer generally will be limited to 5% of the Fund's assets. The Fund's exposure to any single country (other than the United States) generally will be limited to 20% of the Fund's assets. The Fund does not current intend to invest in emerging market countries. The Fund's long positions may total up to 130% of the Fund's Managed Assets. The Fund will take short positions in securities that the Adviser believes in the aggregate will underperform the Index. These securities may consist of securities included in the Index or other securities, including U.S. Treasury securities, which the Adviser believes in the aggregate will underperform the Index. The Fund's short positions may total up to 30% of the Fund's Managed Assets.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. Intra-day, executable price quotations on high yield debt securities, as well as derivative instruments are available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–147 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–147. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–147 and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00304 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68583; File No. SR–C2–2012–038]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Address the Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

January 4, 2013.

I. Introduction

On November 8, 2012, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The proposed rule change was published for comment in the **Federal Register** on November 26, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In its proposal, the Exchange states that it operates a system of trading that allows automatic executions to occur electronically.[4] As part of this infrastructure, the Exchange states that it automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.[5] Mechanically, when the Exchange receives an order from a Trading Permit Holder that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange. The routing broker then sends the corresponding order to the other exchange.

In its proposal, C2 states that the Exchange may encounter situations that make it necessary to cancel orders (or release routing-related orders),[6] and to resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[7]

Proposed Rule 6.47 (Order Cancellation/Release)

New C2 Rule 6.47 provides C2 with general authority to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a routing broker in connection with the routing service provided under C2 Rule 6.36, or another exchange to which an Exchange order has been routed. It also provides that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules. C2 will be required to provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.[8]

Paragraph (b) of the rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at the Exchange, a routing broker, or another exchange to which an order has been routed. Paragraph (c) of the rule provides that, for purposes of Rule 6.47, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.

Proposed Rule 6.37 (Routing Service Error Accounts)

New C2 Rule 6.37 provides that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating error positions. In addition the Exchange may also maintain, in the name of the Exchange, one or more Exchange error accounts (''Exchange Error Account'') for the purposes of liquidating error positions, subject to the procedures prescribed in new C2 Rule 6.37.

Paragraph (a) of the rule provides that errors to which the rule applies include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, that result in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''); and that such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to C2 Rule 6.47.

Paragraph (b) of the rule provides that, generally, each routing broker will use its own error account to liquidate error positions. In certain circumstances, however, the Exchange may use an Exchange Error Account. In particular, in instances where the routing broker is unable to use its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) [9] or where the error is due to a technical or systems issue at the Exchange, the Exchange

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68260 (November 19, 2012), 77 FR 70496 (November 26, 2012) (SR–C2–2012–038) (''Notice'').

[4] *See* Notice, 77 FR at 70496.

[5] *See* Notice, 77 FR at 70496–97 n.5, n.9, and accompanying text.

[6] *See* Notice, 77 FR at 70497. For examples of some of the circumstances in which the Exchange may decide to cancel orders, *see* Notice, 77 FR at 70497–98.

[7] *See* Notice, 77 FR at 70497. Specifically, new C2 Rule 6.37 defines ''error positions'' as ''unmatched trade positions that may occur in connection with the routing service provided under Rule 6.36''.

For examples of some of the circumstances that may lead to error positions, *see* Notice, 77 FR at 70499.

[8] *See* C2 Rule 6.47(a).

[9] *See* Notice, 77 FR at 70498.

may (but would not be required to) determine it is appropriate to use an Exchange Error Account. The Exchange states that in making such a determination to use an Exchange Error Account, the Exchange would consider whether it has sufficient time, information, and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.[10]

Pursuant to paragraph (c), the Exchange will not be permitted to accept any positions in an Exchange Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to an Exchange Error Account. In other words, the Exchange may not accept from a Trading Permit Holder positions that are delivered to the Trading Permit Holder through the clearance and settlement process, even if those positions may have been the result of an error.[11]

To the extent a routing broker uses its own account to liquidate error positions, paragraph (d) of new C2 Rule 6.37 provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third-party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker shall establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 6.36,[12] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[13]

Paragraph (e) of the rule provides that, to the extent an Exchange Error Account is used to liquidate error positions, the Exchange shall liquidate the error positions as soon as practicable. In liquidating error positions in an Exchange Error Account, the Exchange shall provide complete time and price discretion for the trading to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[14] Such a third-party broker-dealer may include a routing broker not affiliated with the Exchange. Paragraph (e) also provides that the Exchange shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the third-party broker-dealer associated with the liquidation of the error positions.

Finally, paragraph (e) provides that the Exchange shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not an Exchange Error Account is used to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act[19] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that C2 Rule 6.47, in allowing C2 to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for C2 to handle such orders, and appears reasonably designed to permit C2 to maintain fair and orderly markets.[20]

The Commission also believes that allowing the Exchange to resolve error positions through the use of error accounts maintained by its routing brokers or the Exchange itself pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission notes that C2 Rule 6.37 only applies to error positions that result from the Exchange's routing service, and that such positions shall be liquidated by the routing broker or the Exchange, as applicable, as soon as practicable.[21] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable

[10] *See id.*

[11] *See* Notice, 77 FR at 70498 n.18. This provision would not apply if the Exchange incurred a position to settle a Trading Permit Holder purchase, as the Trading Permit Holder did not yet have a position in its account as a result of the purchase at the time of the Exchange's action. *See id.*

[12] Rule 6.36(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.

[13] 17 CFR 240.17a–4.

[14] This provision is not intended to preclude the Exchange from providing the third-party broker-dealer with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker-dealer to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the option being traded.

[15] 17 CFR 240.17a–1.

[16] 15 U.S.C. 78f(b).

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C).

[20] The Commission notes that C2 states it believes that allowing the Exchange to cancel or release orders under such circumstances would allow the Exchange to maintain fair and orderly markets, and that C2 Rule 6.37 is designed to ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 70500. The Commission also notes that C2 states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 70497 n.10.

[21] *See* C2 Rule 6.37.

principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission notes that C2 or a routing broker, as applicable, will establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) in the case of liquidations by a routing broker, prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.[22] Furthermore, to the extent the Exchange uses an Exchange Error Account to liquidate error positions, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[23] The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of C2, its routing brokers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that routing brokers would be required to make and keep records associated with the liquidation of routing broker error positions [24] and C2 would be required to make and keep records to document all determinations to treat positions as error positions under this Rule (whether or not an Exchange Error Account is used to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer.[25]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[26]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–C2–2012–038) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00306 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* C2 Rules 6.37(d)(i); 6.37(e)(ii).

[23] *See* C2 Rule 6.37(e)(i).

[24] *See* C2 Rule 6.37(d)(ii).

[25] *See* C2 Rule 6.37(e)(iii).

[26] *See, e.g.,* Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68584; File No. SR–CBOE–2012–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Related to CBSX To Address the Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

January 4, 2013.

I. Introduction

On November 16, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (i) address the authority of CBOE Stock Exchange, LLC (''CBSX'', CBOE's stock execution facility) to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of a CBSX error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the CBSX's routing service. The proposed rule change was published for comment in the **Federal Register** on November 26, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In its proposal, the Exchange states that CBSX operates a system of trading that allows automatic executions to occur electronically.[4] As part of this infrastructure, the Exchange states that CBSX automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with CBSX.[5] Mechanically, when CBSX receives an order from a Trading Permit Holder that is held in the CBSX system and determines to route an order to another exchange, CBSX provides the routing broker with a corresponding order and instructions to route the order to another trading center. The routing broker then sends the corresponding order to the other trading center.

In its proposal, CBOE states that CBSX may encounter situations that make it necessary to cancel orders (or release routing-related orders), [6] and to resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[7]

Proposed Rule 52.3A (Order Cancellation/Release)

New CBOE Rule 52.3A provides CBSX with general authority to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at CBSX, a routing broker in connection with the routing service provided under CBOE Rule 52.10, or another trading center to which a CBSX order has been routed. It also provides that a routing broker may only cancel orders being routed to another trading center based on the CBSX's standing or specific instructions or as otherwise provided in the Exchange Rules. CBSX will be required to provide notice of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68265 (November 19, 2012), 77 FR 70511 (November 26, 2012) (SR–CBOE–2012–109) (''Notice'').

[4] *See* Notice, 77 FR at 70511.

[5] *See* Notice, 77 FR at 70511–12 n.4, n.8, and accompanying text.

[6] *See* Notice, 77 FR at 70512. For examples of some of the circumstances in which the Exchange may decide to cancel orders, *see* Notice, 77 FR at 70512–13.

[7] *See* Notice, 77 FR at 70512. Specifically, CBOE Rule 52.10A defines ''error positions'' as ''unmatched trade positions that may occur in connection with the routing service provided under Rule 52.10''.

For examples of some of the circumstances that may lead to error positions, *see* Notice, 77 FR at 70514.

cancellation to affected Trading Permit Holders as soon as practicable.[8]

Paragraph (b) of the rule provides that CBSX may also determine to release orders being held on CBSX awaiting another trading center execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at CBSX, a routing broker, or another trading center to which an order has been routed. Paragraph (c) of the rule provides that, for purposes of Rule 52.10A, technical or system issues would include, without limitation, instances where CBSX has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds. In conjunction with this proposed rule change, CBOE also proposed to amend CBOE Rule 52.7 which provides, in part, that an Intermarket Sweep Order (''ISO'') shall be generated if an order that is entered on CBSX would lock or cross a protected quotation in an away market, to provide that if CBSX does not receive any response at all to an outbound ISO, at the expiration of the response time internal, CBSX will release the corresponding order that had been suspended on the CBSX Book pending the response to the ISO in accordance with Rule 52.3A.

Proposed Rule 52.10A (Routing Service Error Accounts)

New CBOE Rule 52.10A provides that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating error positions. In addition CBSX may also maintain, in the name of CBSX, one or more CBSX error accounts (''CBSX Error Account'') for the purposes of liquidating error positions, subject to the procedures prescribed in new CBOE Rule 52.10A.

Paragraph (a) of the rule provides that errors to which the rule applies include any action or omission by CBSX, a routing broker, or another trading center to which a CBSX order has been routed, that results in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''); and that such routing errors would include, without limitation, positions resulting from determinations by CBSX to cancel or release an order pursuant to CBOE Rule 52.3A.

Paragraph (b) of the rule provides that, generally, each routing broker will use its own error account to liquidate error positions. In certain circumstances, however, CBSX may use a CBSX Error Account. In particular, in instances where the routing broker is unable to use its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) [9] or where the error is due to a technical or systems issue at CBSX, CBSX may (but would not be required to) determine it is appropriate to use a CBSX Error Account. The Exchange states that in making such a determination to use a CBSX Error Account, the CBSX would consider whether it has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.[10]

Pursuant to paragraph (c), CBSX will not be permitted to accept any positions in a CBSX Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to a CBSX Error Account. In other words, CBSX may not accept from a Trading Permit Holder positions that are delivered to the Trading Permit Holder through the clearance and settlement process, even if those positions may have been the result of an error.[11]

To the extent a routing broker uses its own account to liquidate error positions, paragraph (d) of new CBOE Rule 52.10A provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third-party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker shall establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 52.10,[12] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[13]

Paragraph (e) of the rule provides that, to the extent a CBSX Error Account is used to liquidate error positions, CBSX shall liquidate the error positions as soon as practicable. In liquidating error positions in a CBSX Error Account, CBSX shall provide complete time and price discretion for the trading to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[14] Such a third-party broker-dealer may include a routing broker not affiliated with CBSX. Paragraph (e) also provides that CBSX shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the third-party broker-dealer associated with the liquidation of the error positions.

Finally, paragraph (e) provides that CBSX shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not a CBSX Error Account is used to liquidate such error positions), as well as records associated with the liquidation of CBSX Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [16] and the rules

[8] *See* CBOE Rule 52.3A(a).

[9] *See* Notice, 77 FR at 70513.

[10] *See id.*

[11] *See* Notice, 77 FR at 70513 n.17. This provision would not apply if the Exchange incurred a position to settle a Trading Permit Holder purchase, as the Trading Permit Holder did not yet have a position in its account as a result of the purchase at the time of the Exchange's action. *See id.*

[12] Rule 52.10.01(c) provides that CBSX shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the routing broker (referred to in the rule as the ''Technology Provider''), and, to the extent the routing broker reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the routing broker to legitimate business purposes necessary for the licensing of routing technology.

[13] 17 CFR 240.17a–4.

[14] This provision is not intended to preclude the Exchange from providing the third-party broker-dealer with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker-dealer to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the option being traded.

[15] 17 CFR 240.17a–1.

[16] 15 U.S.C. 78f(b).

and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act [19] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that CBOE Rule 52.3A, in allowing CBSX to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for CBSX to handle such orders, and appears reasonably designed to permit CBSX to maintain fair and orderly markets.[20]

The Commission also believes that allowing CBSX to resolve error positions through the use of error accounts maintained by its routing brokers or CBSX itself pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission notes that CBOE Rule 52.10A only applies to error positions that result from the Exchanges routing service, and that such positions shall be liquidated by the routing broker or the Exchange, as applicable, as soon as practicable.[21] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission notes that CBSX or a routing broker, as applicable, will establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) in the case of liquidations by a routing broker, prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.[22] Furthermore, to the extent CBSX uses a CBSX Error Account to liquidate error positions, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in a CBSX Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[23] The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of CBSX, its routing brokers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that routing brokers would be required to make and keep records associated with the liquidation of routing broker error positions [24] and CBOE would be required to make and keep records to document all determinations to treat positions as error positions under this Rule (whether or not a CBSX Error Account is used to liquidate such error positions), as well as records associated with the liquidation of CBSX Error Account error positions through a third-party broker-dealer.[25]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[26]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2012–109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00307 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C).

[20] The Commission notes that CBSX states it believes that allowing it to cancel or release orders under such circumstances would allow CBSX to maintain fair and orderly markets, and that CBOE Rule 52.10A is designed to ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 70514. The Commission also notes that CBOE states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to CBSX declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 70512 n.9.

[21] *See* CBOE Rule 52.10A.

[22] *See* CBOE Rules 52.10A(d)(i); 52.10A(e)(ii).

[23] *See* CBOE Rule 52.10A(e)(i).

[24] *See* CBOE Rule 52.10A(d)(ii).

[25] *See* CBOE Rule 52.10A(e)(iii).

[26] *See, e.g.,* Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68579; File No. SR–NYSE–2012–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Eliminating Certain Credits Within the New York Stock Exchange LLC Price List

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 21, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate certain credits within its Price List, which the Exchange proposes to become operative on January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate certain credits within its Price List, which the Exchange proposes to become operative on January 1, 2013.

Currently, the Exchange provides a credit per share of $0.0002 for member organizations, floor brokers, Designated Market Makers (''DMMs''), and Supplemental Liquidity Providers (''SLPs'') that provide displayed liquidity to the Exchange in the following ten active securities (''Active Securities''): [3]

Company name	Symbol
Bank of America Corp.	BAC
Citigroup Inc.	C
Ford Motor Company	F
General Electric	GE
JPMorgan Chase & Co.	JPM
Nokia Corporation	NOK
PFIZER Inc.	PFE
Sprint Nextel Corporation	S
AT&T Inc.	T
Wells Fargo & Co.	WFC

The credit applies to transactions in the Active Securities and is in addition to any other credit for floor and non-floor transactions.[4]

The Exchange proposes to eliminate this credit for member organizations, floor brokers, DMMs, and SLPs from the Fee Schedule because the incremental credit has not resulted in significant additional liquidity in the Active Securities.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that eliminating the credit for transactions in Active Securities for member organizations, floor brokers, DMMs, and SLPs is reasonable because it did not encourage sufficient additional liquidity and competition in the Active Securities on the Exchange. As such, the Exchange believes it is reasonable not to provide an additional credit for transactions in the Active Securities. The Exchange believes that eliminating the credit for transactions in Active Securities is equitable and not unfairly discriminatory because all similarly situated member organizations, floor brokers, DMMs, and SLPs would be subject to the same fee structure. In addition, the Exchange believes that eliminating the credit is equitable and not unfairly discriminatory because it did not generate enough additional volumes of liquidity in Active Securities to warrant the additional credit.

The Exchange believes that the proposed change is designed to provide appropriate incentives for all market participants, thereby removing impediments to and perfecting the mechanism of a free and open market system. In addition, for the reasons stated above, the proposed changes are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the additional credit for executions in Active Securities did not contribute to a meaningful change in market share across NYSE-listed stocks, and therefore, the Exchange expects that eliminating the credit will similarly have little impact on the Exchange or in other securities markets. As stated above, the Exchange believes that the proposed change would impact all similarly situated market participants equally, and as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants. In addition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

[3] *See* Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50).

[4] The credit does not apply to transactions in the Active Securities in the Retail Liquidity Program.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–78 and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00310 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68585; File No. SR–CBOE–2012–108]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Address the Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

January 4, 2013.

I. Introduction

On November 8, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The proposed rule change was published for comment in the **Federal Register** on November 26, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68262 (November 19, 2012), 77 FR 70517 (November 26, 2012) (SR–CBOE–2012–108) (''Notice'').

II. Description of the Proposal

In its proposal, the Exchange states that it operates a ''hybrid'' style system of trading that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange.[4] As part of this infrastructure, the Exchange states that it automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.[5] Mechanically, when the Exchange receives an order from a Trading Permit Holder that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange. The routing broker then sends the corresponding order to the other exchange.

In its proposal, CBOE states that the Exchange may encounter situations that make it necessary to cancel orders (or release routing-related orders),[6] and to resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[7]

Proposed Rule 6.6A (Order Cancellation/Release)

New CBOE Rule 6.6A provides CBOE with general authority to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a routing broker in connection with the routing service provided under CBOE Rule 6.14B, or another exchange to which an Exchange order has been routed. It also provides that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules. CBOE will be required to provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.[8]

Paragraph (b) of the rule provides that the Exchange may also determine to release orders being held on the

[4] *See* Notice, 77 FR at 70518.

[5] *See* Notice, 77 FR at 70518 n.4, n.8, and accompanying text.

[6] *See* Notice, 77 FR at 70518. For examples of some of the circumstances in which the Exchange may decide to cancel orders, *see* Notice, 77 FR at 70519.

[7] *See* Notice, 77 FR at 70518. Specifically, CBOE Rule 6.14C defines ''error positions'' as ''unmatched trade positions that may occur in connection with the routing service provided under Rule 6.14B''.

For examples of some of the circumstances that may lead to error positions, *see* Notice, 77 FR at 70520–21.

[8] *See* CBOE Rule 6.6A(a).

Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at the Exchange, a routing broker, or another exchange to which an order has been routed. Paragraph (c) of the rule provides that, for purposes of Rule 6.6A, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.

Proposed Rule 6.14C (Routing Service Error Accounts)

New CBOE Rule 6.14C provides that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating error positions. In addition the Exchange may also maintain, in the name of the Exchange, one or more Exchange error accounts (''Exchange Error Account'') for the purposes of liquidating error positions, subject to the procedures prescribed in new CBOE Rule 6.14C.

Paragraph (a) of the rule provides that errors to which the rule applies include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, that results in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''); and that such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to CBOE Rule 6.6A.

Paragraph (b) of the rule provides that, generally, each routing broker will use its own error account to liquidate error positions. In certain circumstances, however, the Exchange may use an Exchange Error Account. In particular, in instances where the routing broker is unable to use its own error account (*e.g.,* due to a technical, systems, or other issue that prevents the routing broker from doing so) [9] or where the error is due to a technical or systems issue at the Exchange, the Exchange may (but would not be required to) determine it is appropriate to use an Exchange Error Account. The Exchange states that in making such a determination to use an Exchange Error Account, the Exchange would consider whether it has sufficient time, information, and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.[10]

Pursuant to paragraph (c), the Exchange will not be permitted to accept any positions in an Exchange Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to an Exchange Error Account. In other words, the Exchange may not accept from a Trading Permit Holder positions that are delivered to the Trading Permit Holder through the clearance and settlement process, even if those positions may have been the result of an error.[11]

To the extent a routing broker uses its own account to liquidate error positions, paragraph (d) of new CBOE Rule 6.14 provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third-party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker shall establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 6.14B,[12] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[13]

Paragraph (e) of the rule provides that, to the extent an Exchange Error Account is used to liquidate error positions, the Exchange shall liquidate the error positions as soon as practicable. In liquidating error positions in an Exchange Error Account, the Exchange shall provide complete time and price discretion for the trading to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[14] Such a third-party broker-dealer may include a routing broker not affiliated with the Exchange. Paragraph (e) also provides that the Exchange shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the third-party broker-dealer associated with the liquidation of the error positions.

Finally, paragraph (e) provides that the Exchange shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not an Exchange Error Account is used to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [16] and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

[9] *See* Notice, 77 FR at 70519.

[10] *See* Notice, 77 FR at 70520.

[11] *See* Notice, 77 FR at 70520 n.17. This provision would not apply if the Exchange incurred a position to settle a Trading Permit Holder purchase, as the Trading Permit Holder did not yet have a position in its account as a result of the purchase at the time of the Exchange's action. *See id.*

[12] Rule 6.14B(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.

[13] 17 CFR 240.17a–4.

[14] This provision is not intended to preclude the Exchange from providing the third-party broker-dealer with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker-dealer to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the option being traded.

[15] 17 CFR 240.17a–1.

[16] 15 U.S.C. 78f(b).

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act [19] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that CBOE Rule 6.6A, in allowing CBOE to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for CBOE to handle such orders, and appears reasonably designed to permit CBOE to maintain fair and orderly markets.[20]

The Commission also believes that allowing the Exchange to resolve error positions through the use of error accounts maintained by its routing brokers or the Exchange itself pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission notes that CBOE Rule 6.14C only applies to error positions that result from the Exchange's routing service, and that such positions shall be liquidated by the routing broker or the Exchange, as applicable, as soon as practicable.[21] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission notes that CBOE or a routing broker, as applicable, will establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) in the case of liquidations by a routing broker, prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.[22] Furthermore, to the extent the Exchange uses an Exchange Error Account to liquidate error positions, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[23] The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of CBOE, its routing brokers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that routing brokers would be required to make and keep records associated with the liquidation of routing broker error positions [24] and CBOE would be required to make and keep records to document all determinations to treat positions as error positions under this Rule (whether or not an Exchange Error Account is used to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer.[25]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[26]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2012–108) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00308 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68582; File No. SR–Phlx–2012–146]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategy Caps

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend rule text related to fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled ''Equity Options Fees.'' [3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

---

[19] 15 U.S.C. 78k–1(a)(1)(C).

[20] The Commission notes that CBOE states it believes that allowing the Exchange to cancel or release orders under such circumstances would allow the Exchange to maintain fair and orderly markets, and that CBOE Rule 6.14C is designed ensure full trade certainty for market participants and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 70521. The Commission also notes that CBOE states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 70519 n.9.

[21] *See* CBOE Rule 6.14C.

[22] *See* CBOE Rules 6.14C(d)(i); 6.14C(e)(ii).

[23] *See* CBOE Rule 6.14C(e)(i).

[24] *See* CBOE Rule 6.14C(d)(ii).

[25] *See* CBOE Rule 6.14C(e)(iii).

[26] *See, e.g.,* Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section II Equity Options fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to correct rule text inadvertently included in a recent proposed rule change related to fee caps on dividend,[4] merger,[5] short stock interest [6] and reversal [7] and conversion [8] strategies in order to clarify contradictory language within the rule text.

The Exchange recently filed a rule change which applied fee caps on various strategies in Section II of the Pricing Schedule.[9]

Among other amendments, this rule change increased the cap for dividend, merger and short stock interest strategies from $1,000 to $1,250 provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account. Further, the Exchange adopted a cap for floor options transaction charges for reversal and conversion strategies of $750, provided the reversal and conversion strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, similar to dividend, merger and short stock interest strategies.[10]

The rule text was amended to state, ''Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options will be capped at $1,250 *per month* for dividend, merger and short stock interest strategies executed on the same trading day in the same options class, and option transaction charges in Multiply Listed Options will be capped at $750 *per month* for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.'' [emphases added] The Exchange noted that the strategies need to be executed on the same trading day. Strategy caps offered by the Exchange are and have always been on a per symbol, per day basis. The insertion of the text ''per month'' was inadvertent. The Exchange proposes to delete the ''per month'' text which is inaccurate and contradicts other text which states the strategies need to be executed on the same trading day. The Exchange intended the strategy caps of $1,250 and $750 to be per symbol, per day. The Exchange is proposing to remove the text ''per month'' to correct the Pricing Schedule at Section II and clarify the caps are for the same trading day as specified in the rule text.

The Exchange does not believe that this error caused confusion because the Exchange issued an Options Trader Alert at the time the filing became effective to notify members of the cap. The alert was clear that the caps were per day. In addition, the Exchange has spoken to members and does not believe there is any confusion. The purpose of this filing is to correct the Pricing Schedule by removing the words ''per month'' to make clear the caps are per day.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to amend the rule text relating to strategies is reasonable because the words ''per month'' and ''on the same trading day'' are at odds. The Exchange's proposal to remove the words ''per month'' should clarify the application of the fee caps related to strategies.

The Exchange's proposal to amend the rule text relating to strategies is equitable and not unfairly discriminatory because the Exchange would apply the fee caps in a similar manner to all market participants. All market participants are entitled to the caps on a per day, per symbol basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal is to correct rule text which contains contradictory language. The Exchange believes this amendment would provide clarity with respect to the application of strategy caps and would benefit market participants. The Exchange does not believe that there is a misunderstanding among market participants that the strategy caps are per day.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[4] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[5] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock.

[6] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[7] Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

[8] Conversions are established by combining a long position in the underlying stock with a long put and a short call position that share the same strike and expiration.

[9] *See* Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR–Phlx–2012–138).

[10] The Exchange also increased the cap for floor equity options transaction charges for dividend, merger and short stock interest strategies combined from the greater of $10,000 per member or $25,000 per member organization per month to simply $35,000 per member organization per month provided that such members are trading in their own proprietary account. The Exchange proposed to apply this cap of $35,000 per member organization per month to reversal and conversion strategies as well and term the cap as the ''Monthly Strategy Cap.'' *See* Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR–Phlx–2012–138).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–146 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–146, and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00305 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68580; File No. SR–NYSE–2012–79]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Adopt a Trading License Fee for Calendar Year 2013

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 21, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adopt a trading license fee for calendar year 2013. The Exchange proposes to make the rule change operative on January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to adopt a trading license fee for calendar year 2013.

NYSE Rule 300(b) provides that, in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually at a price per trading license to be established each year by the Exchange pursuant to a rule filing submitted to the Securities and Exchange Commission (''Commission'') and that the price per trading license will be published each year in the Exchange's price list. The Exchange proposes to leave the current trading license fees in place for 2013: $40,000 for the first two licenses held by a member organization, and $25,000 for each additional license. Fees will continue to be prorated for any portion of the year that a license may be outstanding. The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

The Exchange proposes to make the rule change operative on January 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal constitutes an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange also believes that the trading license fee is reasonable because it is the same as it has been since June 2011.[5]

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] *See* Securities Exchange Act Release Nos. 64582 (June 2, 2011), 76 FR 33390 (June 8, 2011) (SR–NYSE–2011–23) and 66108 (January 5, 2012), 77 FR 1768 (January 11, 2012) (SR–NYSE–2011–71). The

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will keep trading license fees the same as they have been since June 2011. As a result, the Exchange does not believe that the proposed rule change will place an unreasonable burden on current members because their trading license fees will remain the same. In addition, the Exchange does not believe that the proposed rule change will place an unreasonable burden on potential members because a potential member's fees will be the same as for a current member and pro-rated for licenses held for less than year.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–79 and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00303 Filed 1–9–13; 8:45 am]

BILLING CODE 8011–01–P

trading license fee was initially set at $40,000 in January 2009. *See* Securities Exchange Act Release No. 59140 (December 22, 2008), 73 FR 80488 (December 31, 2008) (SR–NYSE–2008–130). In June 2011, the fee was changed to $40,000 per license for the first two licenses and $25,000 per license for any additional trading licenses. *See supra* SR–NYSE–2011–23.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

CapitalSpring SBIC, L.P., License No. 09/79–0454, Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that CapitalSpring SBIC, L.P., 950 3rd Avenue, 24th Floor, New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). CapitalSpring Partners SBIC, L.P. proposes to provide debt security financing to LBE Holdings, LLC., 5305 Spine Road, Suite A, Boulder, CO 80301.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Capital Spring Finance, Company, LLC and FCP III., all Associates of CapitalSpring SBIC, L.P., will participate in the financing, including a discharge of an obligation to CapitalSpring Finance Company, LLC and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: December 12, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–31292 Filed 1–9–13; 8:45 am]

BILLING CODE P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 14, 2012, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 14, 2012, in Annapolis, Maryland, the Commission took the following actions: (1) Approved settlement involving a water resources project; (2) approved or tabled the applications of certain water resources

projects; (3) rescinded approvals for two projects and tabled a rescission for another project; and (4) took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: December 14, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Recognized former Maryland Alternate Commissioner Herbert M. Sachs for his service to the Commission and established an SRBC Lifetime Achievement Award in Watershed Management in his name; (2) heard a presentation on eel collection, stocking, and research by U.S. Fish and Wildlife Service Fisheries Biologist Ian Park; (3) adopted a resolution urging adequate funding for the Susquehanna Flood Forecast & Warning System (SFFWS), the Advanced Hydrologic Prediction Services Program (AHPS), and the National Streamflow Information Program (NSIP); (4) adopted a Low Flow Protection Policy (LFPP); (5) authorized publication of notice of proposed rulemaking; (6) approved two grant amendments and authorized execution of a Feasibility Cost Sharing Agreement (FCSA) under terms negotiated by staff, and subject to subsequent ratification, for Phase II of the Susquehanna River Basin Ecological Flow Management Study; and (7) denied a request for an administrative hearing of the Municipal Authority of the Township of East Hempfield.

Compliance Matter

The Commission approved a settlement in lieu of civil penalty for the following project:

1. Chobani, Inc.; South Edmeston Facility, Town of Columbus, Chenango County, N.Y.—$130,000.

Rescission of Project Approvals

The Commission rescinded approvals for the following projects:

1. Project Sponsor and Facility: Cinram Manufacturing, Borough of Olyphant, Lackawanna County, Pa. (Docket Nos. 19960701 and 19960701–1).

2. Project Sponsor and Facility: Woolrich, Inc., Gallagher Township, Clinton County, Pa. (Docket No. 20050305).

Rescission of Project Approval Tabled

The Commission tabled a rescission for the following project:

1. Project Sponsor and Facility: Clark Trucking, LLC Northeast Division (Lycoming Creek), Lewis Township, Lycoming County, Pa. (Docket No. 20111207).

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Aqua Infrastructure, LLC (Source Approval), Piatt, Mifflin, Watson, Cummings, Anthony, Lycoming, and Cogan House Townships, Lycoming County, Pa. Modification to expand regional pipeline system (Docket No. 20120604).

2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Bowman Creek), Eaton Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 0.290 mgd (peak day) (Docket No. 20080929).

3. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek), Lemon Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 0.054 mgd (peak day) (Docket No. 20080920).

4. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 0.250 mgd (peak day) (Docket No. 20080918).

5. Project Sponsor and Facility: Centura Development Company, Inc., Old Lycoming Township, Lycoming County, Pa. Groundwater withdrawal of up to 0.250 mgd (30-day average) from Well 1.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek), Rush Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 0.715 mgd (peak day) (Docket No. 20110607).

7. Project Sponsor and Facility: Chief Oil & Gas LLC (Sugar Creek), Burlington Borough and Burlington Township, Bradford County, Pa. Surface water withdrawal of up to 0.099 mgd (peak day).

8. Project Sponsor and Facility: EQT Production Company, Duncan Township, Tioga County, Pa. Groundwater withdrawal of up to 0.072 mgd (30-day average) from Antrim Well 1 and groundwater withdrawal of up to 0.072 mgd (30-day average) from Antrim Well 2.

9. Project Sponsor and Facility: EQT Production Company (Pine Creek), Porter Township, Lycoming County, Pa. Surface water withdrawal of up to 1.000 mgd (peak day).

10. Project Sponsor and Facility: EXCO Resources (PA), LLC (Little Muncy Creek), Franklin Township, Lycoming County, Pa. Surface water withdrawal of up to 0.999 mgd (peak day).

11. Project Sponsor and Facility: Borough of Patton, Clearfield Township, Cambria County, Pa. Groundwater withdrawal of up to 0.316 mgd (30-day average) from Well 2 and groundwater withdrawal of up to 0.316 mgd (30-day average) from Well 3.

12. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (First Fork Sinnemahoning Creek), Wharton Township, Potter County, Pa. Renewal of surface water withdrawal of up to 0.231 mgd (peak day) (Docket No. 20080928).

13. Project Sponsor and Facility: Southwestern Energy Production Company (Lycoming Creek—Bodines), Lewis Township, Lycoming County, Pa. Request for extension of Docket No. 20091207.

14. Project Sponsor and Facility: Southwestern Energy Production Company (Lycoming Creek—Ralston), McIntyre Township, Lycoming County, Pa. Request for extension of Docket No. 20091210.

15. Project Sponsor and Facility: Southwestern Energy Production Company (Middle Lake), New Milford Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.070 mgd (peak day).

16. Project Sponsor and Facility: Talisman Energy USA Inc. (Tamarack Lake), Armenia Township, Bradford County, Pa. Surface water withdrawal of up to 0.040 mgd (peak day).

17. Project Sponsor and Facility: West Cocalico Township Authority, West Cocalico Township, Lancaster County, Pa. Renewal of groundwater withdrawal of up to 0.259 mgd (30-day average) from Well 2 (Docket No. 19780101).

18. Project Sponsor and Facility: York County Solid Waste and Refuse Authority, Hopewell Township, York County, Pa. Modification to replace a remediation well source with no increase in the total system withdrawal limit (Docket No. 19970506).

Project Applications Tabled

The Commission tabled the following project applications:

1. Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Modification to increase surface water

withdrawal by an additional 0.500 mgd (peak day), for a total of 0.900 mgd (peak day) (Docket No. 20120303).

2. Project Sponsor and Facility: Caernarvon Township Authority, Caernarvon Township, Berks County, Pa. Application for renewal of groundwater withdrawal of up to 0.035 mgd (30-day average) from Well 6 (Docket No. 19820912).

3. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Silver Creek), Silver Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.720 mgd (peak day).

4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20080906).

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080923).

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080914).

7. Project Sponsor and Facility: Citrus Energy (Susquehanna River), Washington Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.994 mgd (peak day) (Docket No. 20081205).

8. Project Sponsor and Facility: Equipment Transport, LLC (Pine Creek), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.467 mgd (peak day).

9. Project Sponsor and Facility: Falling Springs Water Works, Inc. (Falling Springs Reservoir), Ransom Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.800 mgd (peak day).

10. Project Sponsor and Facility: Galeton Borough Water Authority, Galeton Borough, Potter County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from the Germania Street Well.

11. Project Sponsor and Facility: Houtzdale Municipal Authority (Beccaria Springs), Gulich Township, Clearfield County, Pa. Application for surface water withdrawal of up to 5.000 mgd (peak day).

12. Project Sponsor and Facility: Mark Manglaviti & Scott Kresge (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

13. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Modification to increase surface water withdrawal by an additional 0.499 mgd (peak day), for a total of 1.498 mgd (peak day) (Docket No. 20100309).

Project Applications Withdrawn

The following project applications were withdrawn by the project sponsors:

1. Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Watson Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

2. Project Sponsor and Facility: Gaberseck Brothers (Odin Pond 2), Keating Township, Potter County, Pa. Application for surface water withdrawal of up to 0.249 mgd (peak day).

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 21, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2013–00309 Filed 1–9–13; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''**DATES**.''

DATES: October 1, 2012, through November 30, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(e)

1. Cinram Group, Inc., Olyphant, Pa. Facility, ABR–201211001, Borough of Olyphant, Lackawanna County, Pa.; Consumptive Use of Up to 0.200 mgd; Approval Date: November 5, 2012.

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia LLC, Pad ID: Hare Ridge, ABR–201210001, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: October 2, 2012.
2. Cabot Oil & Gas Corporation, Pad ID: AldrichL P1, ABR–201210002, Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: October 3, 2012.
3. Cabot Oil & Gas Corporation, Pad ID: RutkowskiB P1, ABR–201210003, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: October 3, 2012.
4. Cabot Oil & Gas Corporation, Pad ID: BrayB P1, ABR–201210004, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: October 3, 2012.
5. WPX Energy Appalachia, LLC, Pad ID: Reber—Dozier Well Pad, ABR–201210005, Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: October 3, 2012.
6. Chief Oil & Gas LLC, Pad ID: T. Brown Drilling Pad, ABR–201210006, Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: October 9, 2012.
7. Chesapeake Appalachia LLC, Pad ID: Ramsher, ABR–201210007, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: October 9, 2012.
8. XTO Energy Incorporated, LLC, Pad ID: West Brown A, ABR–201210008, Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 4.500 mgd; Approval Date: October 12, 2012.

9. EOG Resources, Inc., Pad ID: WARD B Pad, ABR–201210009, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 15, 2012.
10. EOG Resources, Inc., Pad ID: KLINE A Pad, ABR–201210010, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 15, 2012.
11. EOG Resources, Inc., Pad ID: KLINE B Pad, ABR–201210011, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 15, 2012.
12. Chief Oil & Gas LLC, Pad ID: Tague West Drilling Pad, ABR–201210012, Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: October 16, 2012.
13. Chief Oil & Gas LLC, Pad ID: Teeter Drilling Pad, ABR–201210013, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: October 16, 2012.
14. EOG Resources, Inc., Pad ID: PLOUSE A Pad, ABR–201210014, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 19, 2012.
15. EOG Resources, Inc., Pad ID: GRIPPIN A Pad, ABR–201210015, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 19, 2012.
16. EOG Resources, Inc., Pad ID: KINGSLY E Pad, ABR–201210016, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: October 19, 2012.
17. WPX Energy Appalachia, LLC, Pad ID: Bolles South Drilling Pad, ABR–201210017, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: October 26, 2012.
18. Chief Oil & Gas LLC, Pad ID: Mehalick Drilling Pad, ABR–201210018, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: October 26, 2012.
19. WPX Energy Appalachia, LLC, Pad ID: Nota Well Pad, ABR–201210019, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: October 29, 2012.
20. Cabot Oil & Gas Corporation, Pad ID: DeluciaR P1, ABR–201211002, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 9, 2012.
21. Chesapeake Appalachia, LLC, Pad ID: Molly J, ABR–201211003, Monroe and Overton Townships, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 16, 2012.
22. Chesapeake Appalachia, LLC, Pad ID: Slattery, ABR–201211004, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 16, 2012.
23. Anadarko E&P Company LP, Pad ID: Terry D. Litzelman Pad A, ABR–201211005, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: November 16, 2012.
24. Anadarko E&P Company LP, Pad ID: Larry's Creek F&G Pad F, ABR–201211006, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: November 16, 2012.
25. Cabot Oil & Gas Corporation, Pad ID: EmpetD P1, ABR–201211007, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 20, 2012.
26. Cabot Oil & Gas Corporation, Pad ID: WoodE P1, ABR–201211008, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 20, 2012.
27. Cabot Oil & Gas Corporation, Pad ID: McLeanD P1, ABR–201211009, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 20, 2012.
28. Chesapeake Appalachia, LLC, Pad ID: Kupetsky, ABR–201211010, Nicholson Township, Wyoming County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 28, 2012.
29. EXCO Resources (PA), LLC, Pad ID: COP Tract 727 (Pad 3), ABR–201211011, Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: November 28, 2012.
30. EXCO Resources (PA), LLC, Pad ID: Short Mountain Pad 1, ABR–201211012, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: November 28, 2012.
31. Southwestern Energy Production Company, Pad ID: SHELDON EAST PAD, ABR–201211013, Thompson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 30, 2012.
32. Southwestern Energy Production Company, Pad ID: LOKE PAD, ABR–201211014, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 30, 2012.
33. Southwestern Energy Production Company, Pad ID: HARRIS PAD, ABR–201211015, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 30, 2012.
34. Cabot Oil & Gas Corporation, Pad ID: HordisC P1, ABR–201211016, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 30, 2012.
35. Cabot Oil & Gas Corporation, Pad ID: LoffredoJ P1, ABR–201211017, Nicholson Township, Wyoming County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: November 30, 2012.
36. Chesapeake Appalachia, LLC, Pad ID: Amcor, ABR–201211018, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 30, 2012.
37. Chesapeake Appalachia, LLC, Pad ID: Joequswa, ABR–201211019, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 30, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 31, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2013–00300 Filed 1–9–13; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 482X)]

BNSF Railway Company—Abandonment Exemption—in Cook County, IL

On December 21, 2012, BNSF Railway Company (BNSF) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of

49 U.S.C. 10903 to abandon a 2.14-mile of rail line between Station 36 + 70, north of the Chicago Sanitary and Ship Canal Bridge, and Station 149 + 87, at the end of the track near Western Avenue, in Cook County, Ill. (the Line). The Line traverses U.S. Postal Service Zip Codes 60608, 60623, and 60632. There are no stations on the Line.[1]

BNSF states that, based on information in its possession, the Line contains no federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).[2] A final decision will be issued by April 10, 2013.

[1] According to BNSF, Pure Asphalt Company has been the only active shipper on the Line in the past five years.

[2] The Board has previously denied a petition by BNSF to abandon the Line. *The Burlington N. Santa Fe Ry.—Abandoment of Chicago Area Trackage in Cook County, Ill.,* AB 6 (Sub-No. 382X) (STB served Sept. 21, 1999).

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following the abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 30, 2013. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 6 (Sub-No. 482X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423; and (2) Karl Morell, Ball Janik LLP, 655 15th Street NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before January 30, 2013.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 4, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00324 Filed 1–9–13; 8:45 am]

BILLING CODE 4915–01–P

Reader Aids

Federal Register

Vol. 78, No. 7

Thursday, January 10, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

36 CFR

Proposed Rules:
1195.....1166

37 CFR

201.....1755

40 CFR

49.....2210
51.....2210
52.....882, 885, 887, 889, 894, 896, 897, 900, 1149, 1759, 1760, 2211
81.....900, 1149

Proposed Rules:
9.....277
52....37, 45, 918, 921, 922, 924
63.....277
80.....277
81 .....51, 924, 925
85.....277
122.....277
123.....277
180.....1798
412.....277

44 CFR

67.....27

46 CFR

Proposed Rules:
2.....2148
24.....2148
30.....2148
70.....2148
90.....2148
91.....2148
188.....2148

47 CFR

1.....1166
27.....1166
73 .....32, 266, 2078
95.....1188

Proposed Rules:
20.....1799
79.....1823

48 CFR

Proposed Rules:
327.....2229
352.....2229

49 CFR

171.....988, 1101
172.....988, 1101
173.....988, 1101
175.....988, 1101
176.....988, 1101
177.....988
178.....988, 1101
611.....1992

Proposed Rules:
172.....1119
173.....1119
175.....1119
571.....2236
611.....2038
Ch. VIII.....1193

50 CFR

17.....344
622.....907
648.....33
660.....580
679.....267, 270

Proposed Rules:
17 .....59, 278, 2239
18.....1942
635.....279
648.....2249
660.....72

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 4310/P.L. 112–239
National Defense Authorization Act for Fiscal Year 2013 (Jan. 2, 2013; 126 Stat. 1632)

H.R. 8/P.L. 112–240
American Taxpayer Relief Act of 2012 (Jan. 2, 2013; 126 Stat. 2313)

Last List January 4, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.